Federal Register

5–24–00 **Wednesday**
Vol. 65 No. 101 **May 24, 2000**
Pages 33429–33736

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $638, or $697 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $253. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $9.00 for each issue, or $9.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 65 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

Contents

Federal Register

Vol. 65, No. 101

Wednesday, May 24, 2000

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 65, No. 101
Wednesday, May 24, 2000

Presidential Documents

Title 3—

The President

Proclamation 7310 of May 19, 2000

World Trade Week, 2000

By the President of the United States of America

A Proclamation

The prosperity the United States enjoys today is due, in no small part, to our strong trading relationships with other nations. The World Trade Organization, the North American Free Trade Agreement, and 270 other agreements have helped us to open new markets for U.S. products and services, create thousands of new jobs, and keep our economy growing without inflation. The African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act that I signed into law this week will build on this progress by lowering trade barriers and strengthening our economic partnership with nations in sub-Saharan Africa and the Caribbean basin.

The theme of World Trade Week this year, ''Working the Web of Trade,'' reflects the particular importance of the Internet as a new and rapidly accelerating factor in world trade. The Internet holds enormous commercial potential and brings extraordinary opportunities directly into homes and workplaces across the United States and around the world. Linking businesses and consumers more quickly and directly than ever before, the worldwide web is a powerful tool, available 24 hours a day, 7 days a week, that allows even the smallest company to conduct business on a global scale.

My Administration has worked hard to encourage America's businesses and workers to embrace this worldwide web of opportunity and its potential to enhance productivity at home and access to markets abroad. By investing in research and development, improving the quality of science and mathematics education in our schools, teaching workers new skills to fill jobs in the technology sector, and keeping e-commerce fair, safe, and competitive, we can stimulate our export industries, sustain this remarkable period of growth and prosperity, and ensure America's continued leadership in the global economy.

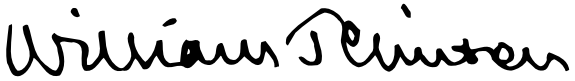
This week, when the Congress takes up legislation to grant Permanent Normal Trade Relations status to the People's Republic of China, it will have an opportunity to further the progress we have made in building strong trading relationships. PNTR for China will increase America's competitiveness in the global marketplace, reduce tariffs, and give American workers and farmers unprecedented access to China's more than one billion consumers.

World trade, whether conducted in person, on paper, or on line, remains a cornerstone of American economic growth. But even more important, trade plays a vital role in improving opportunity and prosperity around the globe. Free and fair international trade is one of the most effective tools we have to bring people together, raise living standards in developed and developing nations alike, promote human dignity, and improve long-term prospects for democracy, stability, and world peace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 2000, as World Trade Week. I invite the people of the United States

to observe this week with events, trade shows, and educational programs that celebrate the benefits of international trade to our economy and our world.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–13162
Filed 5–23–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7311 of May 19, 2000

Small Business Week, 2000

By the President of the United States of America

A Proclamation

The men and women who own and operate our Nation's 25 million small businesses have made, and continue to make, an indispensable contribution to America's economic strength and success. These entrepreneurs possess many of the characteristics that have always defined the American spirit: a fierce independence, an extraordinary work ethic, and an uncompromising commitment to building a better life. Taking risks to fulfill their dreams, they have made a profound and positive impact on the lives and futures of their fellow citizens.

America's small business owners represent more than 99 percent of all employers, and they employ more than half of the private sector workforce. They create 80 percent of the new jobs in our economy, and last year they generated 51 percent of our Nation's gross national product—more than $16 trillion. Small business owners are leaders in innovation, creating a wellspring of new technology, new products, and more effective business processes.

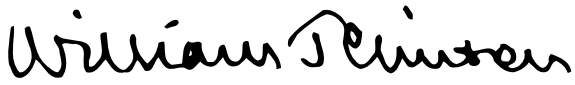
Recognizing the important role small businesses play in the life of our Nation and in the vitality of our economy, my Administration is committed to continuing and expanding their success so that more Americans have the opportunity for prosperity and a secure future for themselves and their families. By balancing the Federal budget, we freed up capital for starting and expanding small businesses. We have put in place policies and programs that grant tax and regulatory relief and expand access to capital and overseas markets for small businesses. And we have strengthened America's workforce through investment in education, training, and improved benefits.

Through the Small Business Administration, we guaranteed more than $12 billion in loans to nearly 50 thousand companies last year alone; opened the door to $4.2 billion in venture capital investment for 2,000 companies; and provided management and technical assistance to more than 900,000 small businesses. Through our New Markets Initiative and our efforts to bridge the digital divide, my Administration is helping to create opportunities for small businesses by promoting public and private sector investment in underserved communities and expanding e-commerce capability.

During Small Business Week, we salute America's millions of small business owners; men and women of courage and initiative whose future is limited only by their imagination and whose success has created better lives for us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 21 through May 27, 2000, as Small Business Week. I call upon government officials and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and encourage the development of new enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 00–13190
Filed 5–23–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 101
Wednesday, May 24, 2000

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 274 and 277

[Amdt. No. 385]

RIN 0584–AB66

Food Stamp Program: Payment of Certain Administrative Costs of State Agencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Food Stamp Program Regulations to implement a reduction of the Federal reimbursement rate for fraud control, automatic data processing development and Systematic Alien Verification for Entitlements costs incurred by State agencies in administering the Food Stamp Program. These changes are mandated by the Mickey Leland Childhood Hunger Relief Act of 1993. In addition, this rule limits the period that a State agency may retroactively claim Federal funding of administrative costs for Food Stamp Program activities and allows the incremental costs of certifying Temporary Assistance for Needy Families households for food stamps to be charged to the Food Stamp Program for Federal reimbursement purposes.

DATES: This rule is effective June 23, 2000, except that 7 CFR 277.11(d) is effective October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, State Administration Branch, Program Accountability Division, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Room 905, Alexandria, Virginia, 22302, (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Dates'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary of the Food, Nutrition and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect the State and local agencies which administer the Food Stamp Program, by modifying the recordkeeping and reporting requirements applicable to them, and modifying the rates of Federal funding reimbursement for certain Food Stamp Program activities.

Executive Order 13132/Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. FNS has considered the impact on State agencies. This rule deals with reimbursements of State agency costs and codifies a cut in the reimbursement rate that was effective April 1, 1994, by law. This rule is intended to have preemptive effect with respect to any State law which conflicts with its provisions or which would otherwise impede its full implementation. FNS is not aware of any case where any of these provisions would in fact preempt State law and no comments were made to that effect.

Prior Consultation With State Officials

Prior to drafting this final rule, we received input from State agencies at various times. Since the Food Stamp Program is a State administered, federally funded program, our regional offices are having informal and formal discussions with State and local officials on an ongoing basis regarding funding and implementation issues. This arrangement allows State agencies to provide feedback that form the bases for many discretionary decisions in this and other Food Stamp Program rules. In addition, we send representatives to regional, national, and professional conferences to discuss our issues and receive feedback on funding issues, fraud control, and State information systems. Lastly, the comments on the proposed rule from State and local officials were carefully considered in the drafting of this final rule.

Nature of Concerns and the Need To Issue This Rule

States were concerned that the cut in the funding rate would put a burden on State funding for the Food Stamp Program and may result in reduced State effort to combat fraud and upgrade State information systems. Concern was also raised that the cutback in the funding rate while States would need to continue to submit a fraud control plan would represent an unfunded mandate.

Finally, there was concern regarding the proposed deadline for filing retroactive claims for reimbursement.

While the cutback in the funding rate in 1994 had an impact on State agencies, the reduced reimbursement rate is mandated by law and does not involve Department discretion. The rule is necessary to codify the cut in the reimbursement rate. The deadline on retroactive claims is necessary to direct State and Federal resources toward the present operation of the program.

Extent to Which We Meet These Concerns

With the increase in recipient claim collections since FY 1994, States are receiving additional funds through the retention of a part of those increased collections. In response to State concerns, FNS did eliminate the requirement for a fraud control plan based on State comments in this rule but will consider what information, if any, should be required as part of a separate overall revision to State Plan requirements. That will be done outside this rule. We clarified the wording regarding the deadline and the process for submitting prior year claims to FNS.

While FNS did not seek State agency comment in advance regarding the change in payment systems and the change in reporting form (from the SF–270, Request for Advance or Reimbursement, to the SF–269, Financial Status Report) for prior year administrative cost reporting, FNS does believe the change benefits States because it streamlines the payment process. States benefit because the electronic form SF–269 minimizes rekeying data in the event of a revised report and reduces the processing time to make funds available to the State. Faster payment processing benefits States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is submitting for Office of Management and Budget (OMB) approval the proposed information collection resulting from implementing the provisions contained in this rule. The proposed information collection is for a change in use of the SF–269.

The reporting requirements relating to the FCS–366A, Budget Projection, are approved under OMB No. 0584–0083. The reporting requirements relating to the use of the Standard Form (SF)-269, Financial Status Report, and the SF–269A, Financial Status Report Addendum, are approved under OMB No. 0348–0039. The reporting requirements for the SF–270, Request for Advance or Reimbursement, are approved under OMB No. 0348–0004.

Comments on this information collection must be received by July 24, 2000 to be assured of consideration.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Manish Desai, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503.

Send requests for additional information or copies of this information collection to: Barbara Hallman, Chief, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302 or call (703) 305–2383.

Title: Uniform Administrative Requirements for Grants and Cooperative Agreements—7 CFR Parts 3016 and 3019.

OMB Number: 0348–0039.

Expiration Date: Three years from date of approval.

Type of Request: Revision of a currently approved collection.

Abstract: Section 16(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et. seq.) authorizes the Secretary to pay each State agency an amount equal to 50 percent of all allowable administrative costs involved in each State agency's operation of the Food Stamp Program. State agencies draw the funds for administrative costs from the United States Treasury through a Letter of Credit. Under corresponding Food Stamp Program regulations at 7 CFR 277.11(c) State agencies are required to use the standard Financial Status Report (Form SF–269) on a quarterly basis to report program administrative costs to FNS and to support the claims made for Federal funding. Final reports are due December 30 for the preceding Federal fiscal year which runs from October 1 through September 30 or 90 days after termination of Federal financial support.

Beginning in FY 1998, State agencies were required to use the SF–269, rather than the SF–270, to revise prior year expenditure reports. The SF–269 is used with a Letter of Credit payment system. Prior to FY 1996, under FNS' previous payment system, the Letter of Credit closed after the end of the fiscal year. In FY 1996 FNS changed to the Department of Treasury's new payment system, Automated Standard Application for Payments (ASAP), which kept the Letter of Credit system open after the end of the fiscal year. As a result, the SF–269 could continue to be used after close-out in the event it was necessary for a State to revise a prior year's report.

The use of the SF–269 and the ASAP for prior years is much more efficient both for States and FNS. With the electronic SF–269 reporting and new payment system, States get their reimbursement faster. The SF–270 process is a manual process that is not tied into State electronic reporting to FNS. Therefore, FNS believes it would require more State resources to complete the SF–270 form compared to electronic SF–269 reporting. The SF–270 process would also require more FNS resources to process the request.

These changes were done at the time without public comment. The use of the Letter of Credit system as the payment system when there is a continuing relationship with the State agency and the use of the SF–269 by State agencies as the reporting form for such systems are required respectively by 7 CFR 3015.102 and 3015.82. In accordance with 7 CFR 3015.1(b), Part 3015 provisions take precedence over any individual agency regulations which may be inconsistent with Part 3015 unless the inconsistency is based on a statutory provision or an exception has been obtained. Because these changes were in accordance with 7 CFR 3015, which takes precedence over agency rules, and because these procedures have been in effect since FY 1998, the Department believes requesting public comment on the procedural change to use the SF–269 for prior year costs that is being codified in this final rule would cause unnecessary delay which is contrary to the public interest. However, the Department is interested in comments regarding the change in the burden estimate for the SF–269 due to its continued use as necessary after fiscal year close-out.

The Financial Status Report Addendum (SF–269A) is used by State agencies to report on a quarterly basis

outlays of program cash-out benefits where FNS has approved the issuance of checks in lieu of food coupons. Final reports are due December 30 for the preceding Federal fiscal year.

Beginning June 1995, State agencies were allowed to submit the SF–269 and SF–269A data electronically to the national database files stored in FNS' Food Stamp Program Integrated Information system in lieu of a paper report. The voluntary changeover from paper to electronic reporting of SF–269 and SF–269A data by States was done as part of FNS' State Cooperative Data Exchange (SCDEX) Project. This project is being expanded each year as more FNS forms are transformed to electronic formats for State data entry. As of January 2000, 47 State agencies submit the SF–269 (and SF–269A if appropriate) data electronically and 6 State agencies continue to submit paper reports.

For FY 1995 and prior fiscal years, the SF–270 continues to be used until the funding fiscal year has been canceled because the Letter of Credit is no longer open for those years. OMB requires the use of the Form SF–270 when a State agency wants to adjust the program's financial status when the Letter of Credit is not used. The Department regulations at 7 CFR 3015.84(b) implemented this mandatory use of the SF–270. The SF–269 is authorized under 7 CFR 3015.82(a) and 7 CFR 277.11.

Section 277.11(d) of this final rule contains a deadline for filing claims for Federal reimbursement. Thus, State agencies will no longer be able to claim reimbursement for Fiscal Years 1998 and before effective October 1, 2000.

Section 277.11(d) of this final rule contains an information collection and reporting requirement. It requires the State agency to use a reporting form specified by FNS to request retroactive funding. With the time limit on filing claims, this form will be the SF–269.

Respondents: State agencies that administer the Food Stamp Program.

Number of Respondents: 53.

Estimated Number of Responses per Respondent:

Form SF–269: 53 State agencies five times a year for current year (required) and three times a year for prior years (estimated based on an as-needed basis).

Form SF–269A: 12 State agencies five times a year.

Estimate of Burden:

Form SF–269: The 53 State agencies submit Form SF–269 for the current year at an estimate of 16.8 hours per respondent, or 4,452 hours. The 53 State agencies submit revised SF–269 (for prior years) three times annually at an estimate of 1 hour per respondent for an additional 159 hours annually. The use of the electronic SF–269 in FNS information system will minimize the amount of information to be rekeyed by States for a revised SF–269 since States only need to rekey information that has changed. Because the additional 159 hour burden had not been previously approved by OMB, this represents an increase of 159 hours.

Form SF–269A: Approximately 12 State agencies submit Form SF–269A at an estimate of 1 hour per respondent or 60 total hours.

Estimated Total Annual Burden on Respondents: FNS use of the SF–269, SF–269A, and SF–270 was previously approved under OMB No. 0505–0008; however, this package was eliminated. The SF–269 and SF–269A are approved under OMB No. 0348–0039. The SF–270 is approved under OMB No. 0348–0004. Consequently, we are requesting approval of the burden increase for FNS use of the SF–269 form. The revised annual reporting and recordkeeping burden for the Food Stamp Program for this form is estimated to be 4,671 hours. This estimate represents an increase of 159 hours from the previously approved burden of 4,512 hours.

The remaining provisions of this rule do not contain reporting or recordkeeping requirements subject to approval by OMB.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Section 13961 of the Mickey Leland Childhood Hunger Relief Act of 1993 (Leland Act) (Pub. L. 103–66, 107 Stat. 679), signed on August 10, 1993, amended Section 16 of the Food Stamp Act (Act) (7 U.S.C. 2025) to reduce the Federal reimbursement rate for fraud control from 75 percent to 50 percent, the rate for automatic data processing (ADP) development from 75 or 63 percent to 50 percent, and the rate for Systematic Alien Verification for Entitlements (SAVE) costs from 100 percent to 50 percent. The change in rates was effective by law April 1, 1994.

In October and November 1993, the Food and Nutrition Service (FNS) regional offices briefed State agencies administering the Food Stamp Program (FSP) on how to implement the new Federal funding rates for reporting and payment purposes effective April 1, 1994. The prompt implementation was necessary to comply with the Leland Act's mandate to reduce the Department's share of State agency administrative costs to the mandated rate as of April 1, 1994, and to minimize the need for revised reporting by State agencies related to budget projections for FY 1994 and actual cost reporting on or after April 1, 1994. Beginning April 1, 1994, State agencies began drawing down Federal funds for expenditures based on the new funding rate for these activities. Effective with the SF–269 Financial Status Report for the third quarter Fiscal Year 1994, State agencies began reporting costs using the new funding rate for these activities.

On November 22, 1994, the Department published in the **Federal Register** (59 FR 60079) a proposed rule which proposed changes in the Federal reimbursement rates for certain activities as required by the Leland Act and a limit on retroactive claiming of Federal funding for State administrative costs. Five comment letters were received which addressed provisions of the proposed rule. FNS has given careful consideration to all comments received. The major concerns of the commenters are discussed below.

Elimination of Enhanced Funding for Fraud Control

The proposed rule reduced the Federal reimbursement rate for fraud control activity from 75 percent to 50 percent in accordance with Section 13961 of the Leland Act, which amended Section 16 of the Act. In the FSP regulations, Federal reimbursement is also referred to as Federal Financial Participation (FFP). The new FFP rate was effective by law April 1, 1994.

FNS received 4 comments on this part of the proposed rule, all from State agencies. All commenters objected to the cutback in the FFP rate for fraud control activity.

One commenter stated that fraud control activity was an important activity that more than paid for itself in FSP (Federal) savings and that the reduction in the Federal reimbursement rate will result in a reduced level of effort. The commenter pointed out that the unprecedented growth in the FSP demonstrates the need for increased fraud control activities, but that some States lack adequate staff to address the need for fraud control programs. Another commenter stated that activities like front-end investigations to catch fraudulent applicants before the benefits go out the door, prosecutions of violators, and claim recovery work are costly and time consuming activities that were feasible for States to perform due to the enhanced Federal funding. Reinstating the 75 percent FFP rate would help States combat food stamp fraud and would recognize the extra effort that is required to ensure that benefits go only to the truly needy. Another commenter stated that the drop in the funding rate was a step backwards in efforts to combat fraud and that it puts a burden on State funding.

The reduction in the Federal reimbursement rate for fraud control activity is mandated by the Leland Act and does not involve Departmental discretion. Because the reimbursement rate is mandated by law, the final regulation retains the new funding rate as specified in the proposed rule.

The reduction in the Federal reimbursement rate for fraud control reflects a shift in emphasis from up-front funding to performance-based funding through the retention of claims collections. State agencies currently retain 35 percent of claims collected for intentional program violations and 20 percent of inadvertent household error claim collections. The Federal Tax Refund Offset Program provides an additional fiscal incentive for anti-fraud activity by making available to State agencies a new cost-effective means of claims collection. The Department encourages State agencies to use this new tool to boost claims collection and create additional State funding through increased retentions. The increase in retentions would replace some of the lost Federal administrative funding, and could be used to do front-end investigations.

With the elimination of enhanced fraud funding, the detailed requirements for funding investigations has been removed and Section 277.15 has been removed and reserved. However, the requirement to conduct investigations of alleged intentional FSP violations in § 273.16, and to operate fraud detection units in all project areas of 5,000 or more participating households in § 272.4(h) remain in effect.

In the proposed rule, specific reference to prosecution activity of intentional program violations as being an allowable cost would be eliminated because the regular 50 percent funding rate would apply to food stamp prosecutions, thereby eliminating the need for the reference. However, since the proposed rule was published, a revised OMB Circular A–87 has been issued. The revised circular provides that prosecution activities are an unallowable cost unless treated as a direct cost to a specific program when authorized by program regulations. Section 16(a) of the Act authorizes payment of FSP prosecution costs. Consequently, the final rule includes additional specific wording in Appendix A of 7 CFR part 277 that reflects that prosecution of FSP intentional program violations is an allowable cost of FSP administration. This wording is intended to continue the current practice of classifying such costs as allowable, and ensures that program regulations continue to reflect this, consistent with the requirements of the revised OMB Circular A–87. However, the provision on prosecutions will now be found in Appendix A of 7 CFR Part 277, along with other general cost principles applicable to State agencies administering the FSP.

The proposed rule retained the requirement for a fraud control plan in 7 CFR 272.2 and 277.15 but changed the timing of the submission of the plan. Two State agencies commented on this provision. One pointed out that the fraud control plan was originally required as part of the request for enhanced funding and that to require the plan without providing the enhanced funding was akin to placing an unfunded mandate on the States. The commenter stated that States are struggling to control costs and reduce budgets where possible and that removing the fraud control plan requirement would be helpful. The other commenter indicated that the fraud control plan was for Federal benefit, not for State benefit.

As a result of these comments, the Department is dropping its proposal to continue to require a fraud control plan although the availability of 75 percent funding no longer exists. The previous requirement for a fraud control plan in conjunction with 75 percent funding assisted FNS in ensuring that the enhanced funding was used for appropriate fraud control activities. FNS proposed maintaining the fraud control plan because of the importance of fraud detection and prevention to FSP management. However, based on comments, FNS has decided to defer consideration on the amount of information States should routinely provide FNS regarding State anti-fraud activity. FNS is currently revising all regulations governing the State Plan of Operation and will consider what, if any, specific information States should provide on organization structures, staffing, activities, and budget for fraud control as part of the overall revisions to regulations governing the State Plan of Operations. Therefore, this rule drops the requirement for a fraud control plan. Accordingly, the final rule revises 7 CFR 272.2 to eliminate the reference to a fraud control plan.

ADP Development

The proposed rule proposed to eliminate enhanced funding for automated data processing (ADP) development by reducing the funding rate for system development from either 75 or 63 percent to 50 percent in accordance with the Leland Act. We received one comment on this section.

The commenter stated that States are burdened when required to update their current ADP systems due to Federal rule changes or to develop an electronic benefit transfer (EBT) system. The commenter suggested that enhanced funding should be available for a particular window period so States can update their automated systems.

The reduction in the Federal reimbursement rate for ADP development is mandated in the Leland Act and does not involve Departmental discretion. Because the reimbursement rate is mandated by law, this final rule retains the new funding rate as proposed.

The proposed rule also proposed to eliminate section 274.12(k)(3) which states that enhanced funding for coupon issuance activities occurring on Indian Reservations and enhanced funding for the development of EBT systems would both be accommodated within the issuance cap for EBT systems. However, only enhanced funding for the development of EBT and other automated systems under 7 CFR 277.18 is eliminated. Enhanced funding for coupon issuance activities on Indian Reservations remains available under Section 16(a) of the Food Stamp Act and 7 CFR 281.9, and thus such enhanced funding for coupon issuance costs shall continue to be accommodated within

the EBT issuance cap. In this final rule the Department is retaining a portion of the provision in § 274.12(k)(3) (redesignated as § 274.12(k)(2)). The portion that is being retained is the current wording that enhanced funding for coupon issuance activities that a State agency incurs on Indian Reservations shall still be accommodated within the EBT issuance cap. Only the reference in the current 7 CFR 274.12(k)(3) to enhanced funding for the development of EBT systems is being removed.

Prior to the elimination of enhanced funding there were different cost thresholds for prior FNS approval for systems funded with enhanced funding than for systems funded with regular 50 percent funding. The proposed rule proposed to apply the cost thresholds that were applicable to the regular funding requirements to all ADP systems. Thus, the proposed rule eliminated references to enhanced funding but retained in the proposed regulatory text the dollar thresholds under standard funding that were in effect at that time. After the publication of the proposed rule on which this rulemaking is based, the Department published on July 31, 1995, another proposed rule proposing increases in the cost thresholds upon which prior Federal approval is required for Federal financial participation in State ADP equipment acquisition. The final rule raising the cost thresholds for ADP systems was published June 28, 1996. Because the new cost thresholds are now in effect, the final rule drops the proposed text citing the old cost thresholds, thus retaining the current higher cost thresholds. The Department is modifying the proposed text for § 277.18(e)(1), which deletes the reference to enhanced funding, to reflect the new $5 million cost threshold for the submittal of an APD Update. The references to the standard funding rate are retained where necessary in the final text.

In the final rule the Department is also making a technical correction to Appendix A, paragraph b(1), which was inadvertently omitted from the proposed rule, to remove the reference to 63 percent ADP development funding in that paragraph.

SAVE

The Department proposed eliminating enhanced funding for the Systematic Alien Verification for Entitlements (SAVE) Program by dropping the funding rate for SAVE activity from 100 percent to 50 percent funding in accordance with the Leland Act. We received no comments on this section. Because the reimbursement rate is mandated by law, the final rule retains the new funding rate as previously proposed.

Delaying the Effective Date

The proposed rule announced the Department's proposed policy for reviewing and approving requests to delay the April 1, 1994 effective date for the elimination of enhanced funding for certain States which qualified for such an extension under the criteria provided in section 13971 of the Leland Act. For a full discussion of this issue, the reader is referred to the proposed rule.

As the proposed rule noted, FNS had advised States in October/November 1993 of the criteria for a delay of the effective date and the procedure for requesting such a delay if States believed they qualified. To allow adequate time for review, States were to submit their requests by December 31, 1993, but FNS indicated it would consider requests filed after that date. The proposed rule noted that it was the Department's intent that State agencies submit their requests for a delay of the effective date early, and not wait for the completion of the rulemaking process. Four State agencies received approval of a delay in March 1994. They were Arkansas, Texas, Montana, and North Dakota.

One State agency submitted a comment requesting a delay of the April 1, 1994 effective date, but did not submit a formal request demonstrating that it met the criteria for such a delay. The Department emphasizes that States were required to apply, and to demonstrate that they met the criteria in order to be granted a delay. The Department has no authority to grant a delay of the effective date except under the specific circumstances specified in the Leland Act as described in the proposed rule.

The Department notes that the elimination of enhanced funding was effective April 1, 1994 for all but the four approved States. The four approved States received enhanced funding through June 30, 1995, based on their legislative calendars. All States were notified by letter and by the proposed rule of the opportunity to apply for a delay. Further, the April 1, 1994 effective date has well passed. Therefore, the Department believes that the issue of granting delays is now moot and need not be addressed in regulatory text.

Enhanced Funding for Low Payment Error Rates

As stated in the proposed rule, with the reduction in the funding rate to 50 percent for fraud control, ADP development, and SAVE, these three activities now become eligible along with other costs funded at the 50 percent rate for the increased Federal reimbursement rate of up to 60 percent if the State agency achieves a low payment error rate as specified in § 277.4 and 275.23. The incentive funding for a low error rate is provided after the end of the Federal fiscal year.

Two State agencies commented on this policy. One was in favor of this policy as it rewards State agencies that achieve a low payment error rate. The other State agency pointed out that fraudulent applications make it difficult for State agencies to attain a low payment error rate. By denying enhanced funding to States with a demonstrated need for additional support, the State agency believed that such action will ensure that States with a disproportionate share of fraudulent applications will never attain a low payment error rate to qualify for enhanced funding. The State agency believed that moving the reimbursement rate back to 75 percent, rather than incentive funding for a low payment error rate, would assist States in combating food stamp fraud and help to ensure that benefits only go to the truly needy.

The reduction in the funding rate for fraud control is mandated by the Leland Act and the payment of enhanced incentive funding for a low payment error rate is mandated in Section 16(c) of the Act. Neither involves Departmental discretion. The enhanced funding is available as an incentive to encourage States to achieve a low payment error rate and is paid after the end of the fiscal year as a reward. The Department has no authority to pay either enhanced fraud funding or the incentive funding for a low payment error rate to States that have not attained a low payment error rate in order to help them to do so. Accordingly, the proposed regulatory text is adopted as final.

Deadline for Filing Claims for Retroactive Funding

The proposed rule provided that, subject to the availability of funds, FNS would reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency obligated the funds.

One State agency pointed out that a similar Department of Health and Human Services (DHHS) limitation was instituted as a result of legislation enacted by Congress. The State agency

recommended that the Department seek an amendment to the Act.

Section 4(c) of the Act allows the Department to promulgate administrative rules that are necessary or appropriate for the effective administration of the FSP. As the proposed rule noted, in Fiscal Years (FYs) 1991 through 1993, FNS had received requests from State agencies for retroactive funding going back to FY 1981 even though the Federal record retention requirement for State agencies is 3 years. While the Department recognizes that State laws may require retention of records that exceed Federal requirements, the Department believes it is not efficient administration for State agencies to manage, store, and retain financial records well past the 3 years required by Federal regulations and in particular to be actively reviewing stale financial records more than 3 years old. This is especially the case because FNS pays 50 percent of State administrative costs. The intended effect of the proposed limitation on claiming costs is to direct State agency and Federal resources toward the present operation of the program. The Department believes State agencies have a responsibility to properly claim Federal funding on a timely basis.

The commenter noted that the deadline in the proposed rule was calculated based on the quarter in which the State agency *obligated* the funds, and suggested using another baseline such as date of payment, which is used by DHHS.

In the final rule the Department has based the deadline calculation on the quarter in which the cost was incurred by the State or local agency, whichever first incurred the cost. It is at that point that the cost should have been reported on the SF–269, Financial Status Report, for that report period.

One commenter suggested that the definition of the term ''audit exception'' which was provided in the preamble of the proposed rule be included in the regulatory text. The commenter noted that the deadline does not apply to an audit exception and suggested that the rule clarify what would happen if an audit were performed by non-Department Federal auditors or State or private auditors. The commenter also asked whether any procedures will be established to permit the State to provide such audits to Department audit staff in order to gain approval to claim additional costs.

In the final rule, the Department has included a definition of the term ''audit exception'' in § 277.11(d)(5)(ii) of the regulatory text. It has also clarified in the same paragraph that the term ''audit'' includes Federal and State-initiated audits. This includes audits performed by Department auditors, non-Department Federal auditors, State auditors, or private auditors as long as the audit complies with Department audit requirements in 7 CFR 277.17 and 7 CFR part 3015. It also specifies that the audit must have been started within 3 years of the date of submission of the final SF–269 report of the relevant fiscal year to which it applies. Once the audit is resolved, any claim for retroactive Federal funding arising from such an audit should be submitted promptly to FNS with a copy of the relevant audit findings. This procedure will supplement but not replace any other Federal reporting requirements to the cognizant agency for audits in § 277.17 and 7 CFR part 3015. Finally, the final rule makes minor modifications to the proposed wording in § 277.11(d)(4) to improve clarity. The change has no substantive effect.

At the time of the proposed rule and in accordance with 7 CFR 277.4 and 7 CFR 3015.82, State agencies used the SF–269, Financial Status Report, to report costs during the fiscal year as well as final obligations and expenditures in a final (or closeout) SF–269 due December 30 following the fiscal year. At that time, the Letter of Credit, which was the payment method, was closed for that fiscal year. After that, as the proposed rule noted, the SF–270 would be used to request funds for prior year expenditures. Thus, the proposed rule would have required that States use the Form SF–270, Request for Advance or Reimbursement, to request payment for prior year expenditures. OMB requires the use of the SF–270 when a State agency wants to adjust the program's financial status when the Letter of Credit is not used. However, reporting forms follow payment systems and subsequently FNS' payment system was changed.

7 CFR 3015.102 provides that Letters of Credit are to be used to pay Department recipients (i.e., State agencies) when all the following conditions exist:

(i) There is or will be a continuing relationship between the recipient and the USDA awarding agency for at least a 12 month period and the total amount of advances to be received within that period from the awarding agency is $120,000 or more per year.

(ii) The recipient has established or demonstrated to the USDA awarding agency the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the recipient.

(iii) The recipient's financial management system meets the standards for fund control and accountability prescribed in 7 CFR 3015 subpart H.

After the proposed rule was issued, FNS in 1996 started using the Department of Treasury's ASAP payment system as a funding mechanism. This grantee-initiated payment system, which also uses the Letter of Credit as the payment vehicle, has allowed FNS to continue to pay by Letter of Credit well after the end of the fiscal year. It allowed FNS to streamline its payment process. In addition, the extension of the Letter of Credit system for prior years has allowed FNS to continue to use the SF–269 for prior year expenditures.

As a result of this payment system change, in February 1997 FNS issued revised procedures for post-close-out payments and adjustments in Agency Financial Management System procedure number 678 (AFMS–678). Under those procedures, starting in FY 1998, rather than use the SF–270, State agencies were to revise their ''final'' or close-out SF–269's to report the outlay of funds for prior FYs 1997 and 1996. State agencies may request funds for newly identified prior year expenses on a revised SF–269 for that year not more than quarterly. This change in the Letter of Credit system is gradually being phased in year by year. However, for FY 1995 and prior years, the SF–270 continues to be used until the funding fiscal year has been canceled because the Letter of Credit is no longer open for those years.

The change in reporting forms coupled with the use of the new system, ASAP, for prior years is significantly more efficient. The SF–270 process is a manual process that is not tied into State electronic reporting. Thus, it would have required more State resources to complete the paper SF–270 compared to the electronic SF–269. The continued use of the SF–269 after close-out will allow States to continue to use the stored electronic SF–269 form (and its data) to revise their SF–269 reports for prior years through FNS' State Cooperative Data Exchange (SCDEX) with minimal rekeying. Only data that has changed would need to be rekeyed for a revised report. Because the SF–269 data can be transmitted electronically to FNS, the use of the electronic form by States will reduce the processing time to make the funds available to the State agency. Finally, it means State agencies do not need to switch reporting forms after the end of the fiscal year but may continue to use the SF–269.

The Department notes that under 7 CFR 3015.1(b), Part 3015 supersedes

and takes precedence over any individual agency regulations to the extent such regulations are inconsistent with the Department regulation. The proposed use of the SF–270 when the Letter of Credit system is operating would be inconsistent with Part 3015. Because Part 3015 is an existing Department rule which governs and takes precedence over the proposed agency rule, the agency's final rule is being changed to comply with the Department rule. Further, this change has been in effect since FY 1998 and affects only 53 State agencies. The Department believes seeking public comment on the continued use of the SF–269, which is based on a provision of the existing Department rule, would cause unnecessary delay which is contrary to the public interest.

As a result of these procedural changes and to conform to current practice, FNS has revised Section 277.11 in the final rule to drop the reference to the SF–270 and in its place to specify that States use the form specified by FNS to report prior year expenditures. This more general wording gives necessary flexibility to an area that may be subject to change over time as payment systems and electronic reporting procedures evolve.

In addition, because of the continued use of the SF–269 after the final or closeout SF–269 (which is due December 30 immediately following the fiscal year), it was necessary to add text to the regulatory language to make it clear that the audit must have been started within 3 years of the ''*final*'' (or closeout) SF–269 (which is due December 30 immediately following the end of the Federal fiscal year) to get reimbursement. A revision of the ''final'' SF–269 after the final or closeout SF–269 would not start a new 3-year audit clock.

AFDC/Food Stamp Certification Costs

The Department proposed to amend the current regulations to correspond to current practice which allows food stamp certification costs for Aid to Families with Dependent Children (AFDC) cases to be charged to the FSP. As the proposed rule noted, the current practice of charging the incremental cost of certifying AFDC households for food stamps to the FSP has been in effect since October 1, 1983, and is based on a 1983 Memorandum of Understanding between the Department and DHHS. Thus, the FSP is only picking up the incremental costs related to the certifying AFDC households for FSP benefits. The incremental cost is the cost for certification questions which are FSP specific. One State agency commented on this provision, agreeing with the change in wording to reflect current practice. The final rule retains the proposed wording as it reflects current practice.

However, since the proposed rule was issued, the Personal Responsibility and Work Opportunity Reconciliation Act (Pub.L. 104–193) replaced the AFDC program with a Temporary Assistance for Needy Families (TANF) block grant. This change is effective July 1, 1997, or sooner if a State agency's request is approved earlier by DHHS. This change does not materially affect the charging of the incremental costs from that proposed in the proposed rule. The final rule retains the proposed wording except for changing the reference from AFDC to TANF in the final rule.

Effective Date

The provisions in § 277.11(d) regarding time limits for State agencies to file claims to amend a prior expenditure report to request retroactive funding for costs previously incurred are effective October 1, 2000.

Pursuant to Section 13971 of the Leland Act, the reduction in FFP rates mandated by Section 13961 of the Leland Act was effective on April 1, 1994, except for those State agencies for which the Department has granted in writing a delay of the April 1, 1994 effective date.

The conforming amendments to FSP regulations in §§ 272.1, 272.2, 272.11, 274.12, 277.4, 277.9, 277.15, 277.18, 277.19, and Appendix A to Part 277 will be effective June 23, 2000.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant Programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 272, 274 and 277 are amended as follows:

1. The authority citation for Parts 272, 274 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(159) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(159) *Amendment (385).* The provisions in § 277.11(d) regarding time limits for State agencies to file claims to amend a prior expenditure report to request retroactive funding for costs previously incurred are effective October 1, 2000. The conforming amendments to Food Stamp Program regulations in §§ 272.1(g), 272.2(c)(3), 272.11(d) and (e), 274.12(k), 277.4(b) and (g), 277.9(b), 277.18(b), (d), (e), (g) and (p)(5), and Appendix A to Part 277 and the removal of §§ 277.15 and 277.19 are effective June 23, 2000.

3. In § 272.2, paragraph (c)(3) is revised to read as follows:

§ 272.2 Plan of operation.

* * * * *

(c) * * *

(3) *Additional attachments.* Attached for informational purposes (not subject to approval as part of the plan submission procedures) to the Program Activity Statement and submitted as required in paragraph (e)(3) of this section shall be the agreements between the State agency and the United States Postal Service for coupon issuance, and between the State agency and the Social Security Administration for supplemental income/food stamp joint application processing and for routine user status.

* * * * *

§ 272.11 [Amended]

4. In § 272.11:

a. Paragraph (d)(1)(iii) is amended by removing the reference to ''§ 277.19'' and adding in its place a reference to ''§ 277.18 and Appendix A to Part 277''.

b. Paragraph (e)(2) is amended by removing from the first sentence the words '', as outlined in § 277.19(e)''.

PART 274—ISSUANCE AND USE OF COUPONS

§ 274.12 [Amended]

5. In § 274.12:

a. Paragraph (k)(2) is removed and paragraphs (k)(3) through (k)(6) are redesignated as paragraphs (k)(2) through (k)(5) respectively.

b. Newly redesignated paragraph (k)(2) is amended by removing the words ''and the enhanced funding provided in accordance with this

paragraph for development of an EBT system''.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

6. In § 277.4:

a. Paragraphs (b)(1), (b)(10), (b)(11), and (b)(12) are removed;

b. Paragraphs (b)(2) through (b)(9) are redesignated as paragraphs (b)(1) through (b)(8) respectively;

c. The second sentence in newly redesignated paragraph (b)(7) is revised; and

d. New paragraph (g) is added.

The revision and addition reads as follows:

§ 277.4 Funding.

* * * * *

(b) * * *

(7) * * * The rates of Federal funding for the activities identified in paragraphs (b)(2) and (b)(3) of this section shall not be reduced based upon the agency's payment error rate.

* * * * *

(g) Investigations of authorized retail or wholesale food concerns when performed in coordination with the USDA Office of Inspector General and FNS shall be funded at the 50 percent Federal reimbursement rate.

7. In § 277.9, paragraph (b) is revised to read as follows:

§ 277.9 Administrative costs principles.

* * * * *

(b) The incremental cost of certifying TANF households for Food Stamp Program benefits are allowable costs for FNS reimbursement.

* * * * *

8. In § 277.11, a new paragraph (d) is added to read as follows:

§ 277.11 Financial reporting requirements.

* * * * *

(d) *Time limit for State agencies to file claims.* (1) After the deadline in paragraph (c)(4) of this section for the final SF–269 report, State agencies shall use the form specified by FNS as needed within three years of the end of the Federal fiscal year to amend a prior expenditure report pertaining to such Federal fiscal year. The three-year reporting deadline may be extended by FNS if litigation, an audit, or a claim is unresolved at the end of the three-year period. The reporting form shall be used to amend prior expenditure reports, and to request reimbursement for any additional funding due, or to pay back to FNS any inadvertent prior overclaim. Requests for reimbursement will only be honored if the claim is filed within the timeframe in paragraph (d)(2) of this section. FNS reserves the right to bill State agencies for amounts due FNS resulting from an overclaim, even if no reporting form has been submitted.

(2) Subject to the availability of funds from the appropriation for the year in which the expenditure was incurred, FNS may reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency (or local agency) incurred the cost. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(3) For Automated Data Processing (ADP) expenditures approved under § 277.18(c), subject to the availability of funds and required FNS approval related to the Advance Planning Document, FNS may reimburse State agencies for allowable expenditures at the appropriate rate in effect at the time the equipment or service was received only if the State agency files for a claim with FNS within two years after the calendar quarter in which the cost was incurred. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(4) States wishing to request an extension of the deadline in paragraphs (d)(2) and (d)(3) of this section must submit the request in writing to FNS prior to the applicable deadline. The State agency's request for an extension must include a specific explanation, justification, and documentation of why the claim will be late and when the claim will be filed.

(5) The time limits in paragraphs (d)(2) and (d)(3) of this section will not apply to any of the following:

(i) Any claim for an adjustment to prior year costs previously claimed under an interim rate concept;

(ii) Any claim arising from an audit exception as defined in this section. An audit exception means a proposed adjustment by the Department to any expenditure claimed by a State agency by virtue of a Federal-or State-initiated audit. The audit must comply with the requirements of § 277.17 and 7 CFR part 3015, and must have been started within 3 years of the date of submission of the final SF–269 of the relevant Federal fiscal year to which it applies.

(iii) Any claim resulting from a court-ordered retroactive payment. However, this provision does not bind FNS to a State or Federal court decision when FNS was not a party to the action;

(iv) Any claim for which FNS determines there was good cause for the State agency's not filing it within the time limit. Good cause is lateness due to circumstances beyond the State agency's control such as Acts of God or documented action or inaction of the Federal Government. It does not include neglect or administrative inadequacy on the part of the State, State agency, legislature, or any of their offices or employees.

§ 277.15 [Removed and Reserved]

9. Section 277.15 is removed and reserved.

10. In § 277.18:

a. Paragraph (b) is amended by removing the definition of *Enhanced funding or enhanced FFP rate,* and by revising the definition of *Regular funding or regular FFP rate;*

b. The introductory text of paragraphs (d)(1) and (d)(2) are amended by removing the words ''at the regular or enhanced funding rate'' in the first sentence;

c. Paragraph (d)(1)(ii) is amended by removing the last sentence;

d. The third sentence of paragraph (d)(1)(v) is amended by removing the words ''thresholds of § 277.18(c)(1) are met'' and adding the words ''threshold of § 277.18(c)(1) is met'' in their place;

e. The first sentence of paragraph (e)(1) is revised;

f. Paragraph (g) is revised; and

g. Paragraph (p)(5) is revised.

The revisions read as follows:

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

* * * * *

(b) * * *

Regular funding or regular FFP rate means any Federal reimbursement rate authorized by § 277.4(b).

* * * * *

(e) *APD Update.*—(1) *General submission requirements.* The State agency shall submit an APD Update for FNS approval for all approved Planning and Implementation APD's when total acquisition costs exceed $5 million.

* * *

* * * * *

(g) *Conditions for receiving FFP.*—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of ADP and information retrieval systems if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food Stamp Act;

(ii) Meet the program standards specified in § 272.10(b)(1), (b)(2), and (b)(3) of this chapter, except for the requirements in § 272.10(b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) of this chapter to eventually transmit data directly to FCS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with such other systems utilized in the administration of State agency plans under the program of Temporary Assistance for Needy Families (TANF).

(2) State agencies seeking FFP for the planning, design, development or installation of automated data processing and information retrieval systems shall develop Statewide systems which are integrated with TANF. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system used to administer TANF. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

* * * * *

(p) * * *

(5) *Costs.* Costs incurred for complying with the provisions of paragraphs (p)(1) through (p)(3) of this section are considered regular administrative costs which are funded at the regular FFP level.

§ 277.19 [Removed]

11. Section 277.19 is removed.

12. In part 277, Appendix A, in the section titled ''Standards for Selected Items of Cost'':

a. Paragraphs A.(25) through A.(28) are redesignated as paragraphs A.(26) through A.(29) respectively;

b. A new paragraph A.(25) is added;

c. Paragraph B.(1) is amended by removing from the second sentence the words ''to be funded at the 63 percent rate or''.

The addition reads as follows:

Appendix A to Part 277—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

* * * * *

Standards for Selected Items of Cost

A. * * *

(25) *Prosecution activities.* The costs of investigations and prosecutions of intentional Food Stamp Program violations are allowable. Costs of investigation, prosecution, or claims collection which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FNS.

* * * * *

Dated: May 17, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 00–13005 Filed 5–23–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–56–AD; Amendment 39–11725; AD 2000–10–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300–B2K, A300 B4–2C, A300 B4–100, and A300 B4–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, that currently requires certain structural inspections and modifications. This amendment requires that those inspections be accomplished on additional airplanes. This action also requires new repetitive inspections for airplanes in certain configurations at revised thresholds and intervals. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective June 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 13, 1992 (57 FR 8257, March 3, 1992), and as of May 29, 1996 (61 FR 18661, April 29, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–08–08, amendment 39–9574 (61 FR 18661, April 29, 1996), which is applicable to all Airbus Model A300 B2, A300 B2K, A300 B2–200, A300 B4, A300 B4–100, and A300 B4–200 series airplanes, was published in the Federal Register on December 21, 1999 (64 FR 71333). The action proposed to continue to require certain structural inspections and modifications. The action proposed to require that those inspections be accomplished on additional airplanes. The action also proposed to require new repetitive inspections for airplanes in certain configurations at revised thresholds and intervals.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Additional Affected Airbus Models

One commenter suggests that the applicability of the proposed AD be

revised to include Airbus Model A300C4–200 and A300F4–200 series airplanes. The FAA does not concur that the applicability should be revised to include these airplane models, since they are not type certificated in the U.S. No change is made to the final rule.

Reference to French Airworthiness Directive

One commenter suggests that the proposed AD be revised to include a reference to a related French airworthiness directive. The commenter states that the proposed AD correctly refers to French airworthiness directive 90–222–116(B)R4, which references service bulletins for certain inspections also addressed in this proposed AD, but does not mention 93–154–149(B), which references service bulletins for the modifications addressed by this AD.

The FAA acknowledges that the modifications required by existing FAA AD 96–08–08 were also addressed in related French airworthiness directive 93–154–149(B), dated September 15, 1993. The FAA has no objection to including this reference in this final rule, which continues to require those modifications, and has revised the AD accordingly. However, although the FAA generally references the latest pertinent airworthiness directive issued by another airworthiness authority as an informational NOTE in the AD, this information is not intended to be an exhaustive list of all related mandatory continuing airworthiness information, and should not be considered as such.

Changes Made to Proposed AD

To improve the readability of the AD, the FAA has added certain headings to the text of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 13 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–08–08, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new inspection that is required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9574 (61 FR 18661, April 29, 1996), and by adding a new airworthiness directive (AD), amendment 39–11725, to read as follows:

2000–10–01 Airbus Industrie: Amendment 39–11725. Docket 98–NM–56–AD. Supersedes AD 96–08–08, Amendment 39–9574.

Applicability: All Model A300 B2, A300 B2K, A300 B2–200, A300 B4–2C, A300 B4–100, and A300 B4–200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the wings and fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 92–02–09

Inspections and Modifications

(a) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after April 13, 1992 (the effective date of AD 92–02–09, amendment 39–8145), whichever occurs later, except as provided in paragraph (d) of this AD for the service bulletin identified in paragraph (a)(8) of this AD. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection. After April 13, 1992, the actions shall only be accomplished in accordance with the latest revision of the service bulletins specified.

(1) Airbus Service Bulletin A300–53–103, Revision 4, dated June 30, 1983; or Revision 5, dated February 23, 1994;

(2) Airbus Service Bulletin A300–53–126, Revision 7, dated November 11, 1990; or Revision 8, dated September 18, 1991;

(3) Airbus Service Bulletin A300–53–146, Revision 7, dated April 26, 1991;

Note 2: Airbus Service Bulletin A300–53–146 provides for a compliance threshold of within 5 years after the date of issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990, the accomplishment of which is required by AD 85–07–09, amendment 39–5033.

(4) For Configuration 1 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Airbus Service Bulletin A300–53–162, Revision 4, dated November 12, 1990; Revision 5, dated March 17, 1994; or Revision 6, dated March 20, 1996. After the effective date of this new AD, only Revision 6 of the service bulletin shall be used;

(5) Airbus Service Bulletin A300–53–196, Revision 1, dated November 12, 1990; as amended by Service Bulletin Change Notice 1.A., dated February 4, 1991, or Revision 2, dated March 17, 1994;

Note 3: Airbus Service Bulletin A300–53–196 provides for a compliance threshold of within 6,000 landings after accomplishment of Airbus Service Bulletin A300–53–194, accomplishment of which is required by AD 87–04–12, amendment 39–5536.

(6) Airbus Service Bulletin A300–53–225, Revision 2, dated May 30, 1990;

(7) Airbus Service Bulletin A300–53–226, Revision 4, dated November 12, 1990; or Revision 5, dated September 7, 1991;

Note 4: Airbus Service Bulletin A300–53–226 provides for a compliance threshold of within 5 years after the issuance of French airworthiness directive 90–222–116(B), issued on December 12, 1990; but not later than 20 years after first delivery; the accomplishment of which is required by AD 90–03–08, amendment 39–6481.

(8) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Airbus Service Bulletin A300–53–278, dated November 12, 1990; or Revision 1, dated March 17, 1994;

(9) Airbus Service Bulletin A300–54–045, Revision 4, dated January 31, 1990; or Revision 6, dated February 25, 1994;

(10) Airbus Service Bulletin A300–54–060, Revision 2, dated September 7, 1988, and Change Notice 2.A., dated February 13, 1990; or Revision 3, dated February 25, 1994;

(11) Airbus Service Bulletin A300–54–063, Revision 1, dated April 22, 1987, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994;

(12) Airbus Service Bulletin A300–54–066, Revision 1, dated February 15, 1989, and Change Notice 1.A., dated February 13, 1990; or Revision 2, dated February 25, 1994.

Restatement of Certain Requirements of AD 96–08–08

(b) Accomplish the inspections and modifications contained in the Airbus service bulletins listed below prior to or at the thresholds identified in each of those service bulletins, or within 1,000 landings or 12 months after March 29, 1996 (the effective date of AD 96–08–08, amendment 39–9574), whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the corresponding service bulletin for the inspection.

(1) Airbus Service Bulletin A300–57–0194, Revision 2, including Appendix 1, dated August 19, 1993;

(2) Airbus Service Bulletin A300–57–166, Revision 3, including Appendix 1, dated July 12, 1993;

(3) Airbus Service Bulletin A300–57–0167, Revision 1, including Appendix 1, dated May 25, 1993;

(4) Airbus Service Bulletin A300–57–0168, Revision 3, including Appendix 1, dated November 22, 1993;

(5) Airbus Service Bulletin A300–57–0180, Revision 1, dated March 29, 1993;

(6) Airbus Service Bulletin A300–57–0185, Revision 1, including Appendix 1, dated March 8, 1993; and

(7) Airbus Service Bulletin A300–54–0084, dated April 21, 1994.

New Requirements of This AD

Inspections

(c) For Configuration 2 airplanes identified in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996, prior to or at the thresholds identified in the service bulletin; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Required inspections shall be repeated thereafter at intervals not to exceed those specified in the service bulletin for the inspection.

(d) For Configuration 1 and 2 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 3,600 flight cycles. Accomplishment of the inspections required by this paragraph constitutes terminating action for the inspections required by paragraph (a)(8) of this AD.

(1) For airplanes that have not been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Inspect at the time specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For Configuration 1 airplanes: Prior to the accumulation of 18,300 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(ii) For Configuration 2 airplanes: At the earlier of the times specified in paragraphs (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) At the time specified in paragraphs (a) and (a)(8) of this AD.

(B) Prior to the accumulation of 22,000 total landings, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have been inspected in accordance with paragraph (a) and (a)(8) of this AD prior to the effective date of this AD: Perform the next inspection within 3,600 landings after accomplishing the last inspection, or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later.

(e) For Configuration 3 airplanes identified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995: Accomplish the inspections contained in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, prior to the accumulation of 26,000 total flight cycles; or within 1,000 landings or 12 months after the effective date of this AD, whichever occurs later. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

Note 5: Accomplishment of the inspections specified in Airbus Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, is considered acceptable for compliance with the significant structural details (SSD) inspection 536206 of ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), Revision 2, dated June 1994, required by AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).

Corrective Actions for All Inspections

(f) If any discrepant condition identified in any service bulletin referenced in this AD is found during any inspection required by this AD, prior to further flight, accomplish the corresponding corrective action specified in the service bulletin, except as specified in paragraph (g) of this AD.

(g) If any crack is found during any inspection required by this AD; and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as required by paragraph (g) of this AD, the actions shall be done in accordance with the Airbus service bulletins listed in paragraphs (j)(1), (j)(2), and (j)(3) of this AD.

(1) The incorporation by reference of Airbus Service Bulletin A300–53–0162, Revision 6, dated March 20, 1996, and Airbus

Service Bulletin A300–53–0278, Revision 2, dated November 10, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of the Airbus service bulletins listed in Table 1 was approved previously by the Director of the **Federal Register** as of April 13, 1992 (57 FR 8257, March 9, 1992).

TABLE 1

Airbus service bulletin No.	Revision level	Service bulletin date
A300–53–103	4	June 30, 1983.
A300–53–126	7	November 11, 1990.
A300–53–146	7	April 26, 1991.
A300–53–162	4	November 12, 1990.
A300–53–196	1	November 12, 1990.
A300–53–225	2	May 30, 1990.
Service Bulletin Change Notice 1.A. to A300–53–196	(Original)	February 4, 1991.
A300–53–226	4	November 12, 1990.
A300–53–226	5	September 7, 1991.
A300–53–278	(Original)	November 12, 1990.
A300–54–045	4	January 31, 1990.
A300–54–060	2	September 7, 1988.
Change Notice 2.A. to A300–54–060	(Original)	February 13, 1990.
A300–54–063	1	April 22, 1987.
Change Notice 1.A. to A300–54–063	(Original)	February 13, 1990.
A300–54–066	1	February 15, 1989.
Change Notice 1.A. to A300–54–066	(Original)	February 13, 1990.

(3) The incorporation by reference of the Airbus service bulletins listed in Table 2 was approved previously by the Director of the Federal Register as of May 29, 1996 (61 FR 18661, April 29, 1996).

TABLE 2

Airbus service bulletin No.	Revision level	Service bulletin date
A300–53–103	5	February 23, 1994.
A300–53–126	8	September 18, 1991.
A300–53–162	5	March 17, 1994.
A300–53–278	1	March 17, 1994.
A300–54–045	6	February 25, 1994.
A300–54–060	3	February 25, 1994.
A300–54–063	2	February 25, 1994.
A300–54–066	2	February 25, 1994.
A300–57–0194	2	August 19, 1993.
A300–57–166	3	July 12, 1993.
A300–57–0167	1	May 25, 1993.
A300–57–0168	3	November 22, 1993.
A300–57–0180	1	March 29, 1993.
A300–57–0185	1	March 8, 1993.
A300–54–0084	(Original)	April 21, 1994.

(4) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 7: The subject of this AD is addressed in French airworthiness directives 93–154–149(B), dated September 15, 1993, and 90–222–116(B)R4, dated March 27, 1996.

(k) This amendment becomes effective on June 28, 2000.

Issued in Renton, Washington, on May 8, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–11948 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–75–AD; Amendment 39–11736; AD 2000–10–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–

400 series airplanes. This action requires repetitive inspections to detect damage or deflection of the crew rest heat exchanger, and follow-on actions, if necessary. This amendment is prompted by reports of cracking and buckling of the front edge of the crew rest heat exchanger on several airplanes. The actions specified in this AD are intended to detect and correct damage or deflection of the crew rest heat exchanger, which could result in jamming of the rudder or elevator control cables, and consequent reduced controllability of the airplane.

DATES: Effective June 8, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 8, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 24, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that cracking and buckling of the forward edge of the crew rest heat exchanger has been found on several airplanes. Investigation revealed that certain heat exchangers were manufactured with material that is too thin. On one airplane, the heat exchanger buckled and bulged enough to make contact with the rudder and elevator cables located below the heat exchanger. Such contact between the heat exchanger and the rudder and elevator control cables could eventually dislodge pieces of the heat exchanger or adjacent fasteners. Dislodged pieces or fasteners could cause a jam of the rudder or elevator control cables. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. The alert service bulletin describes procedures for repetitive general visual inspections to detect damage or deflection of the crew rest heat exchanger, and follow-on actions, if necessary. If damage or deflection is found, follow-on actions include replacement of the affected heat exchanger with a new heat exchanger, and measurement of the thickness of material of the discrepant heat exchanger. If the thickness of the material is within certain limits, the alert service bulletin specifies that the discrepant heat exchanger should be returned to Boeing.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracking or buckling of the crew rest heat exchanger, which could result jamming of the rudder or elevator control cables, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Difference Between This AD and the Alert Service Bulletin

Operators should note that there is a typographical error in the Accomplishment Instructions on page 10 of the alert service bulletin. Item G. under the heading ''Inspection and Replacement of the Heat Exchanger (All Airplanes)'' reads, ''If the material thickness is between 0.028—0.034 inches[,] send the damaged heat exchanger and your inspection results to Boeing.'' The number ''0.034'' should read ''0.038.'' ''NOTE 3'' has been included in this AD for clarification of this point.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must

submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–75–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–10–12 Boeing: Amendment 39–11736. Docket 2000–NM–75–AD.

Applicability: Model 747–400 series airplanes, line numbers 1 through 1205 inclusive, certificated in any category, and equipped with dual crown skin heat exchangers.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage or deflection of the crew rest heat exchanger, which could result in jamming of the rudder or elevator control cables, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Within 1,200 flight hours or 90 days after the effective date of this AD, whichever occurs first, perform a general visual inspection of the crew rest heat exchanger to detect deflection or damage, in accordance with Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action

(b) If any damage or deflection is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the discrepant heat exchanger with a new heat exchanger, and measure the thickness of the material of the discrepant heat exchanger, in accordance with Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. If the material is greater than or equal to 0.028 inches thick but less than or equal to 0.038 inches thick (≥ 0.028 but ≤ 0.038 inches thick), send the damaged heat exchanger and inspection results to the Manager of Service Bulletin Engineering, Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124.

Note 3: There is a typographical error in the Accomplishment Instructions on page 10 of the alert service bulletin. Item G. under the heading ''Inspection and Replacement of the Heat Exchanger (All Airplanes)'' reads, ''If the material thickness is between 0.028—0.034 inches[,] send the damaged heat exchanger and your inspection results to Boeing.'' The number ''0.034'' should read ''0.038.''

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–21A2412, dated January 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on June 8, 2000.

Issued in Renton, Washington, on May 15, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–12671 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM00–8–000; Order No. 640]

Revision of Public Reference Room Procedures for Record Requests

May 17, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is updating its regulation at part 388 governing fees for paper copies of records available in its

Public Reference Room. Until now, to enable requesters to determine whether they wished to order lengthy Commission documents before having to pay for their entire request, the Commission would provide paper copies of up to ten pages free of charge. Now, however, because Commission documents may be previewed electronically over the Internet and in the Public Reference Room, the Commission is eliminating its existing rule providing for up to ten pages without charge. The Commission is also providing that the schedule of fees for finding and duplicating records from the Public Reference Room will be available on the Commission's Web site.

EFFECTIVE DATE: This Final Rule is effective June 23, 2000.

FOR FURTHER INFORMATION CONTACT:

Katherine Waldbauer (Legal Information) Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426 Telephone: (202) 208–0232

Katherina Quijada-Cusack (Technical Information), Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, Telephone: (202) 208–1748

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (the Commission) is updating its regulation at Part 388 [1] governing fees for paper copies of records available in its Public Reference Room. The Commission is eliminating its existing rule that, as to documents from the Commission's Records and Management Information System (RIMS) which may be viewed electronically, requesters may obtain requests consisting of ten or fewer pages without charge. The Commission is also providing that the schedule of fees for finding and duplicating records from the Public Reference Room will be available on the Commission's Web site.[2]

II. Background and Discussion

Section 388.109(a)(4) of the Commission's regulations currently states that ''[t]he public may purchase hard copies of certain documents from the Commission's Records Management and Information System (RIMS). The fee is 15 cents per page. There will be no charge for requests consisting of ten or fewer pages.'' RIMS is a database containing the indexes and images of documents submitted to and issued by the Commission since November 16, 1981. It consists of (a) an electronic database consisting of the scanned-in images of the majority of documents submitted to and issued by the Commission since November 1995 and (b) the majority of documents from 1981 until November 1995 which are available only on microform, a data storage system which includes microfilm and aperture cards. All RIMS documents designated as ''public documents'' are available to the general public, and the majority of RIMS public documents are accessible for viewing and printing through the Commission's Web site free of charge. This rule will eliminate the practice of providing, without charge, paper copies of ten or fewer pages from documents that are available electronically from RIMS.

Beginning in July 1994, the Commission began scanning images of selected documents into the RIMS electronic database, gradually phasing in additional documents. Since July, 1994, the Commission has accumulated a sizeable library of imaged documents. As of February 2000, RIMS contained 470,753 documents comprised of 7,945,632 pages. In addition, the Commission recently enhanced RIMS further to include an improved print capability which allows easier printing of large blocks of pages and higher quality output. Until April 1998, the general public could only obtain documents from RIMS by contacting or going to the Public Reference Room. Since that date the RIMS electronic database has been available through the Commission's Web site, and all of the documents scanned into the RIMS electronic database are now available for viewing and printing through that means. Users with computers who are able to access the Internet are able to view images and print images to their personal printers at no cost.

Before the Commission made access to the RIMS electronic database available through the Internet, the documents could not be viewed prior to being printed. The Commission's regulations, therefore, allowed individuals to request up to ten pages of a document to be printed from microform without charge to determine if the document, or a portion thereof, was what was actually needed by the requester. Now, however, in addition to having RIMS available in the Public Reference Room, the majority of documents requested from RIMS—namely, those available on the RIMS electronic database—can be viewed by the public on the Commission's Web site without charge. Images of scanned documents may now be previewed, and users can print scanned documents directly to their own printers. Alternatively, users still may come to the Public Reference Room to view images on publicly-available computers. Given that previewing of documents can now be done electronically, the Commission is eliminating the practice of printing ten or fewer pages for free for documents that are available for preview in the RIMS electronic database.

The elimination of the current procedure allowing requesters to obtain print requests of ten or fewer pages without charge will have a minimal effect on the public's ability to obtain public records from the Commission, since it will affect only requests which under the revised rule would cost at most $1.50 per request. Elimination of this procedure will also prevent requesters using the Public Reference Room from submitting multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

Certain documents (from 1981 until approximately November 1995) are available only on microform. Because documents stored on microform cannot be viewed via the Internet, requesters of documents from RIMS that are only available on microform will not be charged for requests consisting of ten or fewer pages.

The fee schedule is available upon request from staff of the Public Reference Room. The Commission will also publish the fee schedule on the Commission's Web site.

III. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA) [3] requires rulemakings to contain either a description and analysis of the effect that the Final Rule will have on small entities [4] or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

This Final Rule eliminates a requester's ability to obtain from the Commission documents that can be previewed from RIMS without charge if the request consists of ten or fewer pages, and provides that the Public Reference Room will publish its fee

[1] 18 CFR Part 388.

[2] The fee schedule will be available at www.ferc.fed.us/public/pubref1.htm.

[3] 5 U.S.C. 601–612.

[4] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

schedule on the Commission's Web site. The majority of requesters of documents who will be affected by this Final Rule, both large and small entities, are already able to view and print documents from RIMS from the Commission's Web site without charge, and those requesters without Internet access are free to use the computers in the Public Reference Room without charge to preview RIMS documents. The Commission will continue not to charge requesters of documents only available from RIMS microform for requests consisting of ten or fewer pages.

Publishing the fee schedule on the Web site makes it more readily available to requesters and is consistent with the current practice of publishing the fee schedule of the contractor who provides photocopying and other services to the public in the Public Reference Room on the Commission's Web site.[5] These fee schedules are also available upon request from the staff of the Public Reference Room.

The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[6] No environmental consideration is necessary for the promulgation of a rule that is procedural, ministerial, or related to internal administrative and management actions.[7] The Final Rule changes are procedural in nature and do not substantially change the effect of the underlying legislation or regulations being amended. Accordingly, no environmental consideration is necessary.

V. Information Collection Statement

Regulations promulgated by the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rule.[8] This Final Rule contains no information reporting requirements, and is not subject to these OMB regulations.

VI. Administrative Findings Statement

The Administrative Procedure Act (APA)[9] generally requires agencies to provide notice of proposed rules and opportunity of public comment thereon, but the notice and comment requirement does not apply to ''rules of agency organization, procedure, or practice.''[10] This Final Rule does not substantially alter the right of members of the public to obtain documents. Therefore, this is a rule of agency organization, procedure or practice for which notice and comment is not required.

VII. Congressional Notification and Effective Date

The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns agency procedure and practice. The Final Rule will not substantially affect the rights and obligations of non-agency parties.[11] Therefore, this Final Rule is effective June 23, 2000.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Web site (http://www.ferc.fed.us) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help Line at (202) 208–2222 (E-Mail to web.master@ferc.fed.us) or the Public Reference Room at (202) 208–1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

List of Subjects in 18 CFR Part 388

Confidential business information, Freedom of information

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 388, title 18, of the Code of Federal Regulations as follows:

PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

2. In § 388.109, paragraph (a)(4) is revised and paragraph (a)(6) is added as follows:

§ 388.109 Fees for record requests.

(a) * * *

(4)(i) The public may purchase hard copies of documents available in electronic form from the Commission's Records and Information Management System (RIMS) for 15 cents per page.

(ii) The public may purchase hard copies of documents that are available on microform from RIMS for 15 cents per page. There will be no fee for requests for RIMS microform documents consisting of ten or fewer pages.

* * * * *

(6) The fee schedule for Commission documents is available on the Commission's Web site at *www.ferc.fed.us.*

* * * * *

[FR Doc. 00–13006 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–P

[5] When this rule goes into effect, the Web page will display a fee schedule for services provided by FERC staff at *www.ferc.fed.us/public/pubref1.htm.* The Web site currently lists the fee schedule for additional services provided by the Commission's on-site photocopying contractor, RVJ International, Inc., including self-service photocopying at 25 cents per page, at *www.ferc.fed.us/public/isd/rvj.htm.*

[6] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990]¶ 30,783 (Dec. 10, 1984) (*codified* at 18 CFR Part 380).

[7] 18 CFR 380.4(a)(1).

[8] 5 CFR part 1320.

[9] 5 U.S.C. 551–706.

[10] 5 U.S.C. 553(b)(A).

[11] 5 U.S.C. 804(3)(C).

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA81

Federal Government Participation in the Automated Clearing House; Correction

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim Rule with request for comment; correction.

SUMMARY: The Financial Management Service published in the **Federal Register** on Friday, April 7, 2000 (65 FR 18866) a rule concerning the use of the Automated Clearing House (ACH) system by Federal agencies. This document corrects an inadvertent error in amendatory instruction 4 of that rule.

DATES: This correction is effective April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or walt.henderson@fms.treas.gov; Natalie H. Diana at (202) 874–6590 or natalie.diana@fms.treas.gov; Adam Martin, Financial Program Specialist, at (202) 874–6881 or adam.martin@fms.treas.gov; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or cindy.johnson@fms.treas.gov; or Margaret Marquette, Deputy Chief Counsel, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

Background

The interim regulations that are the subject of this correction were published in the **Federal Register** on Friday April 7, 2000 (65 FR 18866). Amendatory instruction 4 of those regulations inadvertently referred to § 210.5 rather than § 210.5(a). This correction makes clear that § 210.5(b) remains unchanged from the rule as published on April 9, 1999 (64 FR 17472).

In rule FR Doc. 00–8626 published on April 7, 2000 (65 FR 18866) make the following correction:

PART 210—[CORRECTED]

§ 210.5 [Corrected]

1. On page 18869, column 3, correct amendatory instruction 4 to read:

4. Revise § 210.5(a) to read as follows:

Dated: May 17, 2000.

Bettsy H. Lane,

Assistant Commissioner–Federal Finance.

[FR Doc. 00–12988 Filed 5–23–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–134]

Drawbridge Operation Regulations: Hackensack River, NJ.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District has issued a temporary deviation from the existing drawbridge regulations for the AMTRAK Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. This deviation allows the bridge owner to keep the bridge in the closed position from 7 a.m. June 3 through 7 a.m. June 4 and from 7 a.m. June 10 through 7 a.m. June 11, 2000. This deviation is necessary to facilitate necessary repairs to the bridge.

DATES: This deviation is effective at 7 a.m. on June 3, 2000 through 7 a.m. on June 11, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The AMTRAK Portal Bridge has a vertical clearance of 23 feet at mean high water and 28 feet at mean low water. The existing regulations for the bridge in 33 CFR 117.723(c) require the bridge need not be opened Monday through Friday, except federal holidays, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, openings may not be delayed for more than 10 minutes, unless the drawtender and the vessel operator communicating by radiotelephone, agree to a longer delay.

The bridge owner, AMTRAK, asked the Coast Guard to allow the bridge to remain closed from 7 a.m. on June 3, 2000 through 7 a.m. on June 4, 2000 and from 7 a.m. June 10, 2000 through 7 a.m. June 11, 2000. This deviation is necessary to facilitate repairs to the brakes at the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation is authorized under 33 CFR 117.35.

Dated: May 16, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–13043 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–00–010]

RIN 2115–AE84

Termination of Regulated Navigation Area: Monongahela River, Mile 81.0 to 83.0

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is terminating the regulated navigation area on the Monongahela River from mile 81.0 to mile 83.0. The regulated navigation area had been established to ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. Now that all construction on Grays Landing Lock has been completed and the river's width is no longer restricted in this area, the regulated navigation area is no longer required.

DATES: This rule is effective April 28, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of CGD08–00–010 and are available for inspection or copying at Marine Safety Office Pittsburgh between 8 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT M. D. Evanish, Project Manager, telephone number (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 7, 2000 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Termination of Regulated Navigation Area: Monongahela River, Mile 81.0 to 83.0 in the **Federal Register** (65 FR 005). The Coast Guard received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The regulated navigation area was established on November 29, 1991 to

ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. The need for the Regulated Navigation Area no longer exists because all construction on Grays Landing Lock has been completed and the river's width is no longer restricted in this area. Therefore, since the safety concerns that necessitated the regulation no longer exist, this rule removes the regulation establishing this Regulated Navigation Area in § 165.819.

Discussion of Comments and Changes

No comments were received.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal therefore a full regulatory evaluation is unnecessary. The impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Safety measures, Vessels, Waterways.

PART 165—[AMENDED]

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.819 [Removed]

2. Section 165.819 is removed in its entirety.

Dated: April 28, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–13013 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–00–129]

RIN 2115–AA97

Safety Zone: Maine Yankee Steam Generator and Pressurizer Removal Wiscasset, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in a 200-yard radius from position 43°56°55′N, 069″41′53″ W, the southeast corner of the Maine Yankee Barge slip. This safety zone precludes entry into the cove between Bailey's point and Foxbird Island and portions of the Eastern Shore of Bailey Cove, Wiscasset, ME. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling, loading, and transportation of four major components of the Maine Yankee Nuclear Plant which are classified as Class 7 Hazardous Waste.

EFFECTIVE DATE: This rule is effective from May 22, 2000 through July 22, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. V. Timme, Chief of Response and Planning, Captain of the Port, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less that 30 days after publication in the **Federal Register**. Due to the complex planning and coordination involved final details for the closure were not provided to the Coast Guard until April 30, 2000, making it impossible to publish a NPRM or a final rule 30 days in advance. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to close this section of the waterway and protect the maritime public from the hazards associated with the handling, loading and transportation of major components containing class 7 hazardous waste from a nuclear power plant onto a barge.

Background and Purpose

Beginning May 22 and ending July 22, 2000, Stone and Webster, the decommissioning contractor, will load and transport four major components from the Maine Yankee Nuclear Plant to a barge in the Maine Yankee barge slip in Wiscasset, Maine. This regulation establishes a temporary safety zone within 200-yard radius around the southeast corner of the Maine Yankee Barge slip located at position 43°56′55″ N, 069°41′53″ W. This would effectively preclude entry into the cove between Bailey's Point and Foxbird Island and portions of the Eastern Shore of Bailey Cove. This rule is necessary to protect the maritime public from hazards associated with the loading of components of a nuclear power plant, which contain class 7 hazardous waste, onto a barge.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the proposal has no significant effect on shipping, and its impact on fishing is minimal as it removes a small portion (less than one square mile) of the available fishing grounds from active fishing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The commercial fishing community intending to fish portions of Wiscasset restricted by the safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it only affects a very small portion of the waterway and commercial fishing community will be able to utilize other areas of waterway for commercial purposes.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and have determined that this rule does not have sufficient federalism implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an Unfunded Mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section, 165.T01–129, to read as follows:

§ 165.T01–129 Maine Yankee Steam Generator and Pressurizer Removal Wiscasset, ME

(a) *Location.* The following area is a safety zone: All waters within a 200-yard radius around the position 43°56′55″ N, 069°41′53″ W.

(b) *Effective date.* This section is effective from May 22, 2000 through July 22, 2000.

(c) *Regulations.* (1) The general regulations contained in § 165.23 and § 165.20 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or designated personnel. U.S. Coast Guard representatives of the Captain of the Port include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by U.S. Coast Guard personnel or an U.S. Coast Guard vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, ME.

Dated: May 15, 2000.

R.A. Nash

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 00–13042 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 99100008272–0123–02]

RIN 0651–AB07

Changes to Permit Payment of Patent and Trademark Fees by Credit Card

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending the rules of practice to provide for the payment of any patent process or trademark process fee by credit card. The Office previously limited payment by credit card to the fees required for information products or for an electronic submission of or in a trademark application. The Office will now accept payment of any patent process fee, trademark process fee, or information product fee by credit card.

EFFECTIVE DATES: The amendment to § 1.21 is effective July 24, 2000. Section 1.23 is effective June 5, 2000.

FOR FURTHER INFORMATION CONTACT:

Concerning this final rule: Robert W. Bahr, by telephone at (703) 308–6906, or by facsimile to (703) 308–6916 marked to the attention of Robert W. Bahr.

Concerning the payment of fees (by credit card or otherwise) in general: Matthew Lee, by telephone at (703) 305–8051, by e-mail at matthew.lee@uspto.gov, or by facsimile at (703) 305–8007 marked to the attention of Matthew Lee.

SUPPLEMENTARY INFORMATION: It has been the practice of the United States Patent and Trademark Office (Office) to accept payment of fees for information products by credit card, but not to accept patent process fees or trademark process fees by credit card. The Office recently revised 37 CFR 1.23 to expressly permit payment of fees by credit card ''in an electronically filed trademark application or electronic submission in a trademark application.'' *See Trademark Law Treaty Implementation Act Changes,* Final Rule, 64 FR 48989, 48917 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* 103, 120 (September 23, 1999) (TLTIA Final Rule). As explained in the TLTIA Final Rule:

> Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.
>
> Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.
>
> Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge ''all required fees'' or ''the filing fee'' to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the ''required fee'' or the applicable ''filing fee'') within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (*e.g.*, certain debit cards or check cards).
>
> Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

See Trademark Law Treaty Implementation Act Changes, 64 FR at 48906–07 (September 8, 1999), 1226 *Off. Gaz. Pat. Office* at 110.

The Office is now amending the rules of practice to permit payment of any patent process fee, trademark process fee, or information product fee by credit card, subject to actual collection of the fee. The Office will provide a Credit Card Payment Form (PTO–2038) for use when paying a patent process or trademark process fee (or the fee for an information product) by credit card. The Office will not require customers to use this form when paying a patent process or trademark process fee by credit card. If, however, a customer provides a credit card charge authorization in another form or document (*e.g.*, a communication relating to the patent or trademark), the credit card information may become part of the record of an Office file that is open to public inspection. Information concerning fees in general is posted on the Office's Web site at http://www.uspto.gov, and information on completing the Credit Card Payment Form will be posted on the Office's Web site.

The Office will not include the Credit Card Payment Form (PTO–2038) among the records open to public inspection in the file of a patent, trademark registration, or other proceeding. The Credit Card Payment Form (PTO–2038) is the only form the Office uses to collect credit card information during a patent, trademark, or other proceeding. The Credit Card Payment Form (PTO–2038) is the only form the Office will not make available to the public as part of the file of a patent, trademark, or other proceeding. As discussed above, failure to use the Credit Card Payment Form (PTO–2038) when submitting a credit card payment may result in your credit card information becoming part of the record of an Office file that is open to public inspection. If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the Office will not be liable in the event that the credit card number becomes public knowledge.

35 U.S.C. 42(d) and § 1.26 (which concern refund of patent and trademark fees) also apply to requests for refund of fees paid by credit card. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. The Office will not refund a fee paid by credit card by Treasury check, electronic funds transfer, or credit to a deposit account (§ 1.25).

Finally, any payment of a patent process or trademark process fee by credit card must be in writing (*see* § 1.2), preferably on the Credit Card Payment Form (PTO–2038). If a Credit Card Payment Form or other document authorizing the Office to charge a patent

process or trademark process fee to a credit card does not contain the information necessary to charge the fee to the credit card, the customer must submit a revised Credit Card Payment Form or document containing the necessary information. Office employees will not accept oral (telephonic) instructions to complete the Credit Card Payment Form or otherwise charge a patent process or trademark process fee (as opposed to information product or service fees) to a credit card.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.21: Section 1.21(m) is amended to make the $50.00 fee for processing a check returned ''unpaid'' by a bank applicable to any payment refused or charged back by a financial institution. The burden of processing any payment refused or credit card transaction charged back by a financial institution is the same as the burden of processing a check returned ''unpaid'' by a bank. The phrase ''payment refused * * * by a financial institution'' includes a check returned ''unpaid'' by a bank but also applies to the refusal by a financial institution of a payment by other means.

Section 1.23: Section 1.23(a) is amended to add the phrase ''national bank notes'' in the first sentence. This phrase was inadvertently deleted in the TLTIA Final Rule.

Section 1.23(b) is amended by revising the first sentence to eliminate the restriction that the payment of money required for United States Patent and Trademark Office fees by credit card be limited to fees ''in an electronically filed trademark application or electronic submission in a trademark application.''

Response to Comments

The Office published a notice (Notice of Proposed Rulemaking) proposing changes to the rules of practice to implement payment of patent and trademark fees by credit card. *See Changes to Permit Payment of Patent and Trademark Office Fees by Credit Card,* Notice of Proposed Rulemaking, 64 FR 59701 (November 3, 1999), 1228 *Off. Gaz. Pat. Office* 163 (November 23, 1999). The Office received fifteen written comments in response to the Notice of Proposed Rulemaking. Most of the comments supported changing the rules of practice to permit payment of all patent and trademark fees by credit card. Other comments and the Office's responses to the comments follow.

Comment (1): One comment suggested that the Office revise § 1.23 to permit customers to designate their deposit account as overdraft protection for check and credit card payments. The comment further suggested that the charge in § 1.21(m) should be less for those customers designating their deposit account as overdraft protection for check and credit card payments.

Response: Section 1.25 currently permits customers to provide a general authorization to charge fees to a deposit account. Therefore, no change to § 1.23 is necessary to permit customers to authorize the charging of any fee deficiency (*e.g.,* due to a returned check or refused charge) to a deposit account. Since the Office's cost of processing the returned check (or refused charge) is not decreased because a customer has authorized the charging of the fee deficiency resulting from the returned check or refused charge to a deposit account, the Office is not providing a lower fee for processing a returned check or refused charge in such a situation. Nevertheless, customers may still wish to provide an authorization to charge fee deficiencies (*e.g.,* due to a returned check or refused charge) to a deposit account to avoid the adverse results of non-payment of a fee (*e.g.,* loss of a filing date in a trademark application or abandonment of a patent or trademark application).

Comment (2): One comment suggested that the Office permit use of direct bank debit cards.

Response: The Office currently does not accept payment by bank debit cards, since these cards usually require the use of a personal identification number (or PIN). The Office will add other methods of payment (including bank debit cards) as soon as the systems and procedures for implementing them have been developed.

Comment (3): Another comment suggested that the Office permit the use of a ''re-chargeable'' credit card (*i.e.,* a card having a pre-applied balance against which charges may be made).

Response: A ''re-chargeable'' credit card program would operate in a manner similar to the existing deposit account program. Thus, a ''re-chargeable'' credit card program in addition to the current deposit account program does not have sufficient benefit to justify the administrative burden of maintaining these two duplicative programs.

Comment (4): Several comments suggested that the Office permit use of an AMERICAN EXPRESS® card because it has no upper limit. Another comment suggested that the Office permit use of all major credit cards, including AMERICAN EXPRESS® cards and DINER'S CLUB® cards. Another comment suggested that if the Office intends to accept AMERICAN EXPRESS® cards, the language of § 1.23 must be changed since AMERICAN EXPRESS does not consider its card to be a credit card.

Response: The Office desires to maximize convenience to its customers and is committed to adding additional credit cards and other methods of payments as soon as the systems and procedures for implementing them have been developed. In the meantime, the Office currently accepts charges to the following credit cards: AMERICAN EXPRESS®, DISCOVER®, MASTER CARD®, and VISA®. The Office considers each of these cards to be a ''credit card'' within the meaning of § 1.23.

Comment (5): One comment suggested that the Office should retain the Credit Card Form (PTO–2038) in the file of the patent or trademark proceeding (simply redacting the credit card number) so that third parties may determine whether the proper fee was actually authorized and paid.

Response: The Office file of a patent or trademark proceeding in which a fee was paid by credit card will contain a printout from the Office's Revenue Accounting and Management (RAM) system of the fee authorized and paid. When a fee is paid by check in a patent or trademark proceeding, the Office file includes only a printout from the RAM system of the fee paid and an indication that it was paid by check. A copy of the check used to pay the fee is not retained in the file for review by third parties. There is no need to have a different practice for credit card payments.

Comment (6): One comment suggested that the proposed change to permit patent and trademark payments by credit card is an excellent idea, especially if the Office permits the Credit Card Form (PTO–2038) to be submitted by facsimile.

Response: Credit card payments by facsimile will be permitted except in situations in which facsimile submission of correspondence is not permitted in § 1.6(d). Customers will be responsible for transmitting the credit card form to the correct organization within the Office by use of the correct facsimile number.

Comment (7): One comment suggested that the Office should permit a general authorization to charge fees to a credit card, rather than requiring customers to specify an exact amount. Another comment suggested that the Office permit customers to specify a charge

amount of ''up to and including XX'' (the top estimated fee due).

Response: The Office currently does not have systems and procedures in place to accept authorization to charge an unspecified amount to a credit card. However, the Office desires to maximize convenience to its customers and is looking into ways for customers to pay by credit card without specifying the exact dollar amount.

Comment (8): One comment suggested that if a customer uses his or her own form containing the same information as the Credit Card Form (PTO–2038), the Office should accept and treat such information with the same liability as with the Credit Card Form (PTO–2038).

Response: When a customer uses his or her own form containing the same information as the Credit Card Form (PTO–2038) in a patent or trademark proceeding, the Office will attempt to redact the credit card number (except for the last four digits) from the form before it is placed in the file of the patent or trademark proceeding. Nevertheless, the Office strongly encourages customers to use the Office's Credit Card Form (PTO–2038) when paying fees by credit card. The Office will not accept liability for release of credit card information when a customer chooses to use his or her own form rather than the Office's Credit Card Form (PTO–2038).

Comment (9): One comment suggested that the Office could avoid including credit card information in a file open to public inspection (as an alternative to the Credit Card Form (PTO–2038)) by assigning a number or other identifier to a credit card and permitting the customer/cardholder to charge fees to that credit card by reference to the pre-assigned number or identifier.

Response: The Office currently does not store credit card information within any financial systems or databases for access by fee-processing personnel. The Office desires to maximize convenience to its customers and is looking into ways to assign and maintain numbers or identifiers for each credit card number. The Office will implement such a practice as soon as the necessary systems and procedures have been developed.

Comment (10): One comment suggested that the fees charged by credit card institutions for use of a credit card should be borne solely by customers who pay fees by credit card. The comment specifically suggested that the Office impose a surcharge in excess of the given patent or trademark fee on all credit card payments.

Response: Merchant fees charged for credit card transactions are paid by the Department of the Treasury. Processing credit card transactions results in lower costs to the Federal Government when compared to processing payments made by checks. Therefore, there is no need to impose a surcharge for credit card transactions.

Comment (11): One comment suggested that the Office does not always properly expunge information that should not be part of a record open to public inspection, so the Office should inform the public of its expected compliance rate in another notice of proposed rulemaking before adopting a final rule change. Alternatively, the comment suggests that the Office should accept liability for any erroneous disclosure of credit card information included on the Credit Card Form (PTO–2038).

Response: In view of the overwhelming support for the proposed change to permit payment of patent and trademark fees by credit card (and for the prompt adoption of such change), the Office considers it to be contrary to the public interest to delay the adoption of this final rule. The incidental situations in which confidential information was inadvertently released to the public do not warrant delay particularly since use of a credit card is optional.

Classification

Administrative Procedure Act

Pursuant to the authority at 5 U.S.C. 553(d)(1), the amendment to § 1.23 is excepted from the thirty-day advance publication requirement of 5 U.S.C. 553(d) because it relieves a restriction.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The Office did not previously permit patent or trademark fees (except in an electronically filed trademark application or electronic submission in a trademark application) to be paid by credit card. The changes in this final rule will permit small entities as well as non-small entities the option of paying any patent or trademark fee by credit card. Small entities as well as non-small entities will continue to have the option of paying any patent or trademark fee by check, treasury note, national bank note, money order, or charge to a deposit account. Based upon the number of small entities who pay fees to the Office each year and the percentage of fee payments that are by credit card (where currently permitted), the Office expects 16,000 small entities to pay a patent or trademark fee by credit card each year. Thus, the changes in this final rule will not have a significant economic impact on any business.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office has submitted an information collection package to OMB for its review and approval. The title, description, and respondent description for this information collection is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0043.

Title: United States Patent and Trademark Office Fees.

Form Number: PTO–2038.

Type of Review: Approved through January of 2003.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 100,000 responses per year.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Respondent Burden Hours: 20,000 hours per year.

Needs and Uses: Persons submitting fees to the Office need to provide information concerning the purpose for the fee so that the Office is able to: (1) apply the fee to the particular application, patent, trademark registration, or other proceeding, service or product; and (2) determine whether

the person has submitted the fee(s) required by law or regulation. The Credit Card Form provides the public with a convenient manner of paying a patent application or service fee, trademark application or service fee, or information product fee by credit card.

Interested persons are requested to send comments regarding the burden estimate or any other aspects of the information requirements, including suggestions for reducing the burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.21 is amended by revising paragraph (m) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(m) For processing each payment refused (including a check returned ''unpaid'') or charged back by a financial institution—$50.00.

* * * * *

3. Section 1.23 is revised to read as follows:

§ 1.23 Methods of payment.

(a) All payments of money required for United States Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank notes, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for United States Patent and Trademark Office fees may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

Dated: May 15, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–12992 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM39–1–7462; FRL–6703–8]

Approval and Promulgation of Implementation Plans; State of New Mexico; Approval of Revised Maintenance Plan and Motor Vehicle Emissions Budgets; Albuquerque/ Bernalillo County, New Mexico; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Albuquerque/Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP) under the Federal Clean Air Act as Amended in 1990 (the Act). On February 4, 1999, the Governor requested EPA approval of a revision to the CO maintenance plan and motor vehicle emissions budgets covering 1996 to 2006, and the establishment of a CO motor vehicle emissions budget for the year 2010. The EPA initiated the approval process in two rule makings, the first for revisions to the CO maintenance plan and motor vehicle emissions budgets covering 1996 to 2006, and the second action to establish a CO motor vehicle emissions budget for the year 2010. This action is a final approval of both actions; revisions to the CO maintenance plan, and the CO Motor Vehicle Emissions Budget for 1996, 1999, 2002, 2005, 2006, and 2010. These CO Motor Vehicle Emissions Budgets are for transportation conformity purposes.

EFFECTIVE DATE: This rule is effective on May 24, 2000.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Witosky of the EPA Region 6 Air Planning Section, at (214) 665–7214, or WITOSKY.MATTHEW@EPA.GOV.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

1. What Action Is EPA Taking?

The EPA is promulgating final approval of revisions to the Albuquerque CO maintenance plan. The original plan was approved in 1996 (61 *FR* 29970). In a document published December 20, 1999, the EPA published a direct final approval of revisions to the CO maintenance plan and related conformity budgets (64 *FR* 71027), with a companion proposed rule (64 *FR* 71086). The companion proposed rule was published in the event we received adverse comments, which we did. The direct final rule was withdrawn on February 14, 2000 (65 *FR* 7290). That document indicated that final action would be forthcoming.

The EPA also proposed approval of a Motor Vehicle Emissions Budget

(MVEB) for 2010 for the CO maintenance area. That notice was published on February 29, 2000, beginning a 30 day public comment period (65 *FR* 10437). No comments were received on this proposed action.

Today's action is final approval and promulgation of both actions.

2. What Is Being Approved?

First, we are approving revisions to the CO maintenance plan's emission inventory for the nonattainment area. The following table summarizes the emission inventory for Albuquerque.

ALBUQUERQUE MAINTENANCE PLAN

[Carbon monoxide emissions in tons per day (tpd): revised maintenance plan]

Category	1996	1999	2002	2005	2006
Highway Mobile	266.99	229.09	209.01	205.67	205.86
Off-Road Mobile	50.90	52.68	54.46	56.25	56.84
Area	67.19	69.87	72.60	75.25	76.09
Stationary	3.92	27.40	27.54	27.68	27.72
Total	389.00	379.04	363.61	364.85	366.51

The EPA is also approving a series of MVEB's for the region, including a MVEB for the year 2010, which is beyond the current 10 year maintenance plan. These approved MVEB's are as follows:

TABLE 2.—ALBUQUERQUE CO MAINTENANCE PLAN

[Motor vehicle emissions budget (in tpd)]

Year	1996	1999	2002	2005	2006	2010
MVEB	266.99	229.09	209.01	205.67	205.86	222.46

3. How Will These MVEB's Be Used?

These MVEB's will be used for transportation conformity purposes, replacing the budgets in the original maintenance plan. The five year Transportation Improvement Program (TIP) and 20 year transportation plans for the Albuquerque region and corresponding emissions from on-road vehicles cannot surpass the above budgets.

4. When Is EPA's Approval Effective?

This action concerns only approval of the revised maintenance plan and MVEB's. Since December of 1999, the Albuquerque area has been in a conformity lapse, during which time certain transportation projects cannot be approved, accepted, or funded. The EPA is making this action effective upon publication to facilitate the conformity process.

The EPA reminds all parties that this document does not end the conformity lapse. The EPA, FHWA, State, and local planning agencies are working to complete the conformity process. The final conformity determination will be made by the FHWA.

Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rule makings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. It's the EPA's position that approving the necessary budgets as soon as possible, in the interest of facilitating the end of the conformity lapse, is cause to support making this action taking effect on publication.

5. What Comments Did EPA Receive to the Direct Final Notice?

Comment 1

Several parties stated that the Albuquerque Environmental Health Department (AEHD) is inverting the conformity process by setting a MVEB budget to fit a transportation plan. One party stated that the AEHD elected to revise the maintenance plan budget when the transportation plans could not conform. The party further stated that there is no data to show that the increase in VMT being incorporated into the budget is due solely to the unexpected growth in population.

Response

The Clean Air Act as Amended in 1990, hereafter referred to as ''the Act,'' does not prohibit that maintenance areas review and revise their maintenance plans. As long as areas demonstrate continued maintenance, areas may revise them at their discretion, in accordance with the requirements of the Act, EPA's rules, and applicable guidance. Many areas revise them to estimate, more accurately, emissions that have grown at a rate different than the rate assumed in the original maintenance plan. All maintenance plans are revised after eight years, extending them an additional ten years. The AEHD elected to revise several elements of the inventory to make it more accurate. All of the emissions categories were revised as a result of this review.

Similarly, the Act allows areas to revise their Motor Vehicle Emissions Budget, so long as the area demonstrates they will maintain the standard. The revision submitted to the EPA shows total emissions in the area will remain at or below the emissions quantified in the attainment year. This constitutes an acceptable demonstration of continued attainment of the CO standard. (See the Act section 110, see also the preamble to the conformity rule at 58 *FR* 62196 on how to revise the budget and see 40 CFR 93.118).

Comment 2

The party alleged that the AEHD incorporated inappropriate assumptions used in the transportation model into the mobile modeling used to support the SIP revision. The party objected to straight-line interpolation of VMT levels as an inappropriate technique to estimate emissions.

Response

The EPA provided for interpolation as an acceptable method of estimating emissions for regulatory purposes in guidance documents for completing SIP's. Specifically, the EPA guided planning agencies to use interpolation to estimate emissions for projected inventories, where it would be too costly and time-consuming to generate

analyses for the interim years within a specified time period. The EPA issued this guidance for VMT growth factors (Procedures for Preparing Emissions Projections, 1991, page 29), and speeds (Procedures for Emission Inventory Preparation, 1992, page 31), and therefore, emissions.

In the case of Albuquerque, the MPO projected VMT for 1995, 2000, 2005, and 2010 using their transportation model, and per EPA guidance, calibrated the model using Highway Performance Measurement System (HPMS)-based factors. Since the maintenance plan was required to begin in 1996 and conclude in 2006, the AEHD used interpolation to determine the appropriate emissions for interim years. This is acceptable under EPA guidance.

The EPA reviewed the other Mobile5a inputs that represent assumptions about local conditions. It is EPA's position that these assumptions are reasonable and represent the best information currently available.

Comment 3

The party stated that the AEHD incorrectly estimated the impact of Big-I construction on vehicle speeds during construction, and VMT on alternative routes due to construction.

Response

The AEHD is not required to quantify and incorporate the impact of construction in their MVEB in the SIP, because the impact of such construction is considered temporary. Emission inventory guidance does not instruct areas to quantify mobile emissions at the level of discrete construction projects.

We would point out that we cannot make an exception for a violation of the standard that could be attributed to temporary traffic conditions related to construction. While the MVEB does not have to include these temporary emissions, we do support the efforts of the AEHD and other agencies to mitigate them during the construction phase to avoid possible violations.

Comment 4

The party alleged that the AEHD used the 2010 roadway network to calculate emissions for the 2006 projections.

Response

The proposed revision does not use the 2010 road network as the basis for determining VMT and then emissions in 2006. The projections for 2006 were based on interpolation between the two years for which the AEHD conducted VMT and emissions analysis using the more direct method of estimation. This method used complete street inventories, as they are expected to be in 2005 and 2010. Interpolation between these years allocates growth in VMT and emissions to each year during the period being studied. This does not mean that the impact of all road improvements scheduled to take place between 2005 and 2010 are being used to calculate emissions in 2006. As mentioned in a previous response, this interpolation technique is acceptable under EPA guidance.

Comment 5

The party stated that the AEHD used travel demand management programs (TDM's) or transportation control measures (TCM's) to reduce VMT used to set the emissions budget, even though the TDM's and TCM's do not have designated sources of funding and are not in the federally approved SIP.

Response

The AEHD did not use any TCM's or TDM's to calculate the base emission inventory, project future inventories, or set the corresponding MVEB's. The AEHD used VMT projections provided to them by the Middle Rio Grand Council of Governments, the authorized MPO in the area. In a letter dated March 26, 1997, the AEHD specifically requested that the MPO not use any VMT reduction programs in the analysis they were to submit. The City's revision package submitted to the EPA included a summary of the VMT calculation methodology written by the MPO, dated September 11, 1997. That summary stated that the MPO did not use any VMT mitigation programs in the VMT estimates that they were providing. These estimates were then used in the inventory process.

The party referred to measures used to mitigate VMT growth in the effort to meet the MVEB. Those measures were not in the SIP revision, but were incorporated into the conformity analysis, as permitted under the transportation conformity rule. The conformity analysis is under review by the EPA. After review and comment by the EPA, FHWA issues its determination on conformity.

Comment 6

The party alleged that population was attributed to areas that will not have road access until after 2020.

Response

The EPA would remind the party that the action is for approval of the maintenance plan to 2006, and the MVEB to 2010. The EPA reviewed maps available to the general public (''tiger'' maps generated on April 28, 2000, from http://www.census.gov) at the U.S. Census Bureau web site of the referenced areas, and found road access to these areas.

Comment 7

The party stated that the road improvements from the Big I project would induce changes in trip patterns, traffic patterns, and speed that were not adequately captured in the modeling.

Response

The model used by the MPO is appropriate and able to represent these changes. It is EPA's position that the MPO followed appropriate guidance in using the model to project changes in VMT and speed that result from transportation system improvements, the kind of changes in VMT the model was designed to measure.

Comment 8

The party alleged that compliance with the Inspection and Maintenance (I/M) program and anti-tampering enforcement rates were too high. The party said that a 95 percent compliance rate was too high, and the AEHD should have used 90 percent compliance.

Response

The AEHD based their assumption on the national default rate, 96 percent, for approved I/M programs. The AEHD reduced the compliance rate from 96 to 95 percent to be slightly more conservative than the national compliance factor. The EPA receives and reviews periodic summary reports for the program, and finds the assumption reasonable.

Comment 9

The party stated that the AEHD used national default fleet mix and national default mileage accrual rates, when they should have developed their own fleet mix and mileage rates from the I/M program.

Response

Agencies using the Mobile model may use EPA's national default values for these model inputs (See Mobile 5 Users manual). Although the EPA acknowledges that data generated locally is likely to reflect local conditions more accurately, this is at the discretion of the planning agencies. EPA's default values are acceptable for areas that elect not to develop their own, until the EPA can update the model and related default values.

Comment 10

The party objected to setting urban and rural local road speeds to a constant 25 and 20 miles per hour.

Response

The modeling does reflect that the MPO set traffic speed on all urban local roads to an average of 25 miles per hour, and traffic on rural local roads to average 20 miles per hour. An assumption had to be made because the HPMS does not provide data on local roads. For all other road categories, the model employs actual field data to calibrate speeds. The assumption of 20 and 25 miles per hour on local roads was reasonable, and resulted in higher emission factors than such factors for any other road class. The proportion of all traffic on local roads was about ten percent. Local planning agencies are left to make reasonable judgments to estimate speed on these roads. In EPA's opinion, these are reasonable assumptions.

The EPA further analyzed this issue by comparing the VMT and speed data used in the SIP to the data used in the transportation plans now under conformity review. The MPO used the same projected VMT and speed estimates for this SIP, and the corresponding transportation plan and TIP. Since the MPO used identical numbers for both analyses, the impact of the traffic speed assumption vis-a-vis another assumption is minimal.

Comment 11

The party alleges that the AEHD modeled lower speeds and lower emissions by using a speed enforcement program, without documentation to support including such a program.

Response

The projected speeds used to compute the emissions in the SIP revision decreased slightly over time. The EPA reviewed the emission projections in detail and concluded that lower speeds are more a product of increased VMT. Speed estimates on such roadway segments are the product of the transportation model. As pointed out above, the Albuquerque MPO appropriately employed an endorsed model that, under an assumption of continued VMT growth, would induce lower speeds in future years.

Comment 12

The Party contends that the Albuquerque vehicle fleet is not as clean as the national average. The party also stated that the model runs did not differentiate the fleet mix by roadway class.

Response

Under EPA guidance, the AEHD can rely on national default values for vehicle fleet mix and vehicle mileage accrual rates. When the model uses defaults for the mix and mileage rates, the fleet mix by roadway class also becomes an implicit default variable. (Mobile 5 Users Guide, sec. 2.2.2, and 2.2.3).

Comment 13

The Party contends that the goal for decreasing reliance on the Single Occupant Vehicle (SOV) was relaxed from the 2015 plan to the 2020 plan.

Response

Beyond a demonstration of continued maintenance, the issue is not germane to this action. Local agencies have the discretion to elect how they will maintain the standard. The EPA encourages areas to take actions to reduce reliance on the SOV. However, AEHD's revision demonstrates continued attainment with credible analysis, which meets the requirements of the Act.

Comment 14

The Party contends that the 1.4 billion dollars needed to implement the 2020 Plan has not been secured, because the Regional Transit Authority was not granted taxing authority. The Party claims that a line item of $100 million dollars in the 2000 to 2005 plan to purchase busses was deleted, but remained in the first five years of the 2020 plan.

Response

The comment is not germane to this SIP action, because transit improvements were not employed in generating the VMT projections used by the AEHD to project emissions for the inventory and MVEB. The issues of fiscal constraint are beyond the scope of this SIP approval action and should be addressed in the transportation conformity process.

Comment 15

The Party alleges that building additional road capacity produces more VMT, but that the model is inadequate to capture this. The party contends that the model predicts lower emissions as a result of road expansion, when the model should predict more emissions.

Response

The MPO used an endorsed transportation model, currently the best tool available to planning agencies. All areas that employ models must show that their model predicts, with reasonable accuracy, the impact of transportation improvements. This process, called calibration and validation, was performed in order for the modeling results to be acceptable. The EPA encourages the party to bring their concerns into the conformity process through the established public participation process.

Comment 16

The Party states that they regularly commute by bicycle, and observes fewer bicycles on the road despite the increase in facilities. The party says this observation contradicts the assumption of the MPO that increased bicycle ridership will reduce VMT.

Response

The assumption of increased bicycle ridership was not used to estimate VMT, and therefore did not affect emissions in the SIP MVEB.

Comment 17

The Party asked if recent ozone readings presage nonattainment of ozone, that would result through a greater allowance for CO emissions.

Response

The AEHD is not required to demonstrate maintenance of the ozone standard in order to revise their CO maintenance plan in the CO SIP. The concept of conformity was created in the Act to insure that the growth of VMT and on-road emissions did not interfere with attainment and maintenance of national standards. Any actions that AEHD or EPA might take to continue ozone maintenance must be under the legal framework established for control of ozone precursors. Currently there is no monitoring data that indicate ozone violations. If evidence ever shows there are violations, the EPA can issue a SIP call for the area to submit an ozone SIP. An EPA SIP call and/or a designation to ozone nonattainment would, in fact, compel the area to perform conformity analysis for ozone precursors.

The EPA is acting on a revision to the CO SIP, which meets the requirements for such a revision.

Comment 18

The Party asked what would prevent the AEHD from asking for another revision to the MVEB, in three or four years?

Response

The AEHD could request another revision to the MVEB at a later date. The AEHD must extend the initial maintenance plan an additional ten

years before the initial maintenance plan expires in 2006. However, basin-wide emissions must remain below 389 tons per day as established in the maintenance plan.

Comment 19

The Party asks that the EPA issue a conditional approval, with the condition that the transportation model be improved. The Party also requested that approval be conditioned on a commitment from the MPO to a balanced transportation system.

Response

The EPA's review and approval is based on whether the Albuquerque area can maintain the CO standard and prevent violations of the CO standard with a revised MVEB (see section 110 of the Act). It's EPA's opinion that AEHD successfully demonstrated that Albuquerque will continue to maintain the CO standard with a revised MVEB.

6. What Comments Did EPA Receive to the February 28, 2000, Proposed Rule?

The EPA received no comments to that proposed rule.

7. Will Albuquerque have to Revise the Inventory and MVEB's Again?

Albuquerque must revise the maintenance plan again by 2004, to extend the maintenance plan an additional 10 years from the final year of the current plan, 2006. This will cover the years from 2006 to 2016. This may result in changes to the 2006, and 2010 budgets established today. Regardless, the area must remain below the total level of CO emissions established in the maintenance plan to demonstrate continued attainment of the standard.

II. Final Action

The EPA is approving revisions to the Albuquerque/ Bernalillo County carbon monoxide (CO) State Implementation Plan (SIP). This action is a final approval of revisions to each of the categories of the CO emissions inventory, the basin-wide total of CO emissions for the area, and the CO Motor Vehicle Emissions Budgets for 1996, 1999, 2002, 2005, 2006, and 2010. The CO Motor Vehicle Emissions Budgets must be used for transportation conformity purposes once this approval is effective.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive 13132, entitled ''Federalism'' (64 *FR* 43255, August 10, 1999) revokes and replaces Executive Order 12612, ''Federalism,'' and Executive Order 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 *FR* 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective May 24, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental Relations, Carbon Monoxide.

Dated: May 12, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

2. In § 52.1620(e) the table at the end of the paragraph is amended by adding a new entry to the end of the table as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions.

* * * * *

EPA APPROVED NEW MEXICO STATUTES IN THE CURRENT NEW MEXICO SIP

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
* * * * * * *				
City of Albuquerque request for redesignation.	Carbon monoxide maintenance plan and motor vehicle emission budgets.	June 22, 1998.	[Insert date of publication and FR page number].	

[FR Doc. 00–12792 Filed 5–23–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6603–5]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on the ''Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994.'' The amendments in this document clarify the final compliance date, update the list of which large municipal waste combustor (MWC) units are affected by the Federal plan, and add a site-specific compliance schedule for one MWC unit.

On November 12, 1998, the EPA adopted the Federal plan to implement emission guidelines for large MWC units located in areas that are not covered by an approved and currently effective State plan. We are updating the MWC Federal plan to identify large MWC units for which a State plan was approved and became effective since adoption of the Federal plan (November 12, 1998). We are also amending certain regulations to reflect receipt of negative declarations from States that have certified that there are no large MWC units located in the State that would be subject to the Federal plan. We are also amending a table in the Federal plan to clarify that in all cases for all large MWC units, final compliance with all emission limits including the mercury (Hg) and dioxins/furans emission limits must be achieved by December 19, 2000. Finally, we are amending a table to add the site-specific compliance schedule for one additional MWC unit. Today's action does not change the emission limits for large MWC units nor does it change the level of health protection that the Federal plan provides.

DATES: These amendments to part 62 are effective on July 24, 2000, without further notice unless we receive significant material adverse comments by June 23, 2000. If we receive such comments, we will publish, on or before this rule's effective date, a document in the **Federal Register** withdrawing this direct final rule and informing the public that this direct final rule will not take effect.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attn: Docket No. A–97–45/Category V–D, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically. For information on submitting comments electronically, see the **SUPPLEMENTARY INFORMATION** section. Address all comments and data for this action, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/ Category V–D.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding these amendments, contact Ms. Julie Andresen McClintock at (919) 541–5339, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 1) as shown in **SUPPLEMENTARY INFORMATION:**

Docket. Docket No. A–97–45 contains information considered by EPA in developing the MWC Federal plan and this action. You can inspect the docket and copy materials from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548 or fax (202) 260–4400. A reasonable fee may be charged for copying.

SUPPLEMENTARY INFORMATION: We are publishing these amendments without prior proposal because we view these amendments as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to these amendments if adverse comments are filed. These amendments will be effective on July 24, 2000, without further notice unless we receive adverse comment on the parallel proposal by June 23, 2000. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** informing the public that these amendments will not take effect. We will address all public comments in a subsequent final amendment package based on the proposed amendments. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no comments are received, the public is advised that these amendments will be effective on July 24, 2000, and no further action will be taken on these amendments.

Regulated Entities

Entities regulated by this action are existing MWC units with the capacity to combust greater than 250 tons per day of municipal solid waste (MSW) (large MWC units) unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is currently in effect. Regulated categories and entities include the following North American Industrial Classification System (NAICS) codes and Standard Industrial Classification System (SIC) codes.

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry and local government agencies.	562213 92411	4953 9511	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the MWC Federal plan. For specific applicability criteria, see 40 CFR 62.14100 and 62.14102.

Electronic Submittal of Comments

Comments may be submitted electronically. Send electronic submittals to: ''A-and-R-Docket@epamail.epa.gov''. Submit

electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on the proposed amendments to the Federal plan may be filed online at any Federal Depository Library. Comments and data will also be accepted on disks in WordPerfect® version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for the proposal, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/ Category V–D.

Regional Office Contacts

For information regarding the implementation of the MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 1. This table has been updated since published on November 12, 1998 (63 FR 63193).

TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 1 Congress Street, Suite 1100 (CAP) Boston, MA 02114–2023	(617) 918–1659	(617) 918–1505
Kirk Wieber	(212) 637–3381	(212) 637–3901
Argie Cirillo	(212) 637–3203	
Craig Flamm	(212) 637–4021	
U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007–1866		
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 1650 Arch Street, Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2114
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303	(404) 562–9127	(404) 562–9095
Douglas Aburano (MN)	(312) 353–6960	(312) 886–5824
Mark Palermo (IL, IN, OH)	(312) 886–6082	
Charles Hatten (MI, WI)	(312) 886–6031	
U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604		
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0110

Outline

The information presented in this preamble is organized as follows:

I. Amendments to Part 62—Negative Declarations

We are amending part 62 to reflect the receipt of negative declaration letters. A negative declaration letter is a letter from a State authority certifying that there are no designated facilities (MWC units with a capacity to combust greater than 250 tons per day of municipal solid waste) in the State. The negative declaration letter is submitted in lieu of a State plan. We are documenting the receipt of negative declarations by amending 40 CFR part 62, subparts C (Alaska), D (Arizona), E (Arkansas), G (Colorado), I (Delaware), J (District of Columbia), N (Idaho), S (Kentucky), T (Louisiana), Z (Mississippi), BB (Montana), DD (Nevada), GG (New Mexico), JJ (North Dakota), NN (Pennsylvania), QQ (South Dakota), SS (Texas), TT (Utah), XX (West Virginia), YY (Wisconsin), ZZ (Wyoming), BBB (Puerto Rico), and CCC (Virgin Islands).

II. Amendments to Part 62, Subpart FFF

We published in the **Federal Register** of November 12, 1998 (63 FR 63191) the final rule establishing a Federal plan to implement emission guidelines for large MWC units located in areas not covered by an approved and currently effective State plan. We are making the following technical amendments and updates to the MWC Federal plan.

A. Amendments to Table 1

We are amending table 1 of subpart FFF (40 CFR part 62) to add MWC units for which a State plan was approved and became effective since the final MWC Federal plan was published in November 1998. MWC units covered by the State plans for Alabama, Maine, Maryland, Oklahoma, Pennsylvania and Washington are added to table 1 of subpart FFF.

B. Amendment to Table 5

We are amending table 5 of subpart FFF (40 CFR part 62) by adding footnote e to clarify that in all cases for all large MWC units, final compliance with all emission limits including the mercury and dioxins/furans emission limits must be achieved no later than December 19, 2000. This footnote was inadvertently omitted from the final MWC Federal

plan. The addition of this footnote makes table 5 consistent with the requirements of the Clean Air Act, the emission guidelines, and tables 4 and 6 of subpart FFF. Sections 129(b)(2) and (3) of the Clean Air Act require State and Federal plans to ensure that each unit subject to the emission guidelines is in compliance with all requirements of the guidelines not later than 5 years after the guidelines are promulgated. Section 60.39b(d) of the emission guidelines requires each unit subject to the emission guidelines to be in compliance with the mercury and dioxins/furans emission limits no later than 5 years after promulgation of the guidelines. The emission guidelines, which are implemented by either the Federal or a State plan, were promulgated on December 19, 1995, making the final compliance date for mercury and dioxins/furans for all large MWC units December 19, 2000. The emission guidelines require that the owner or operator of an affected facility that began construction, modification or reconstruction after June 26, 1987 achieve final compliance with the mercury and dioxins/furans emission limits within 1 year after promulgation of subpart FFF (*i.e.,* by November 12, 1999) or 1 year after permit issuance.

C. Amendment to Table 6

We are amending table 6 of subpart FFF (40 CFR part 62) by adding footnote c to clarify that the owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve final compliance with the mercury and dioxins/furans emission limits within 1 year after promulgation of subpart FFF (*i.e.*, by November 12, 1999) or 1 year after permit issuance. Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls. Consistent with § 60.39b(c)(5), we included the provision pertaining to permit modification in the Federal plan in recognition of the fact that some owners or operators of affected facilities would need to obtain a permit modification before they could retrofit controls. We never intended for this accommodation to be construed as relieving an owner or operator of the obligation to be in compliance with all emission limits by no later than 5 years after promulgation of the emission guidelines (*i.e.,* December 19, 2000). The addition of this footnote makes table 6 consistent with table 5 of subpart FFF and the emission guidelines. The emission guidelines (§ 60.39b(c)(5)) require MWC units that commenced construction, reconstruction, or modification after June 26, 1987 to achieve compliance with the mercury and dioxins/furans emission limits within 1 year after State plan approval (or permit modification).

The footnote also clarifies that in all cases for all large MWC units, final compliance must be achieved no later than December 19, 2000. (See explanation in Section II.B above.) This footnote was not originally included in the final MWC Federal plan. The addition of this footnote makes it clear that table 6 is consistent with the requirements of the Clean Air Act and the emission guidelines. Sections 129(b)(2) and (3) of the Clean Air Act require State and Federal plans to ensure that each unit subject to the emission guidelines is in compliance with all requirements of the guidelines not later than 5 years after the guidelines are promulgated. Section 60.39b(d) of the emission guidelines requires each unit subject to the emission guidelines to be in compliance with the mercury and dioxins/furans emission limits no later than 5 years after promulgation of the guidelines (*i.e.,* by December 19, 2000).

D. Amendment to Table 6

We are amending table 6 of subpart FFF (40 CFR part 62) by adding a site-specific compliance schedule and increments of progress for unit 3A at the New Hanover County Waste-to-Energy Conversion facility in Wilmington, North Carolina. Unit 3A at the New Hanover County MWC facility had not been identified as a large MWC unit (capacity greater than 250 tpd) when subpart FFF was promulgated in November 1998. Prior to November 1998, the State of North Carolina submitted a negative declaration letter to certify that there were no large MWC units in North Carolina. Subsequently, the State obtained new information and notified EPA that it believed that Unit 3A at the New Hanover County MWC facility might be a large MWC unit and thus subject to subpart FFF. We confirmed that Unit 3A at the New Hanover County MWC facility is a large unit, and thus subject to subpart FFF. The negative declaration letter is, therefore, no longer applicable. Unit 3A is larger than 250 tons per day (tpd) and is covered by subpart FFF.

Due to the confusion over the size of Unit 3A, the owner/operator of the New Hanover County MWC did not have the opportunity to submit a site-specific compliance schedule. In developing the promulgated Federal plan, EPA provided the owner or operator of a large MWC unit the opportunity to submit a site-specific compliance schedule. Unit 3A at the New Hanover County MWC facility is already equipped with an air pollution control system incorporating a spray dryer/fabric filter, and selective noncatalytic reduction. Subpart FFF will only require the addition of carbon injection (or some other mechanism for meeting the applicable dioxins/furans and mercury emission limits), upgrading the continuous emissions monitoring system, and other less extensive changes. For these reasons, we determined that it was appropriate to allow the owner/operator of the New Hanover County MWC facility to submit a site-specific schedule for Unit 3A. The owner/operator of the New Hanover County MWC facility has since submitted such a schedule and we are amending table 6 to add that site-specific schedule for unit 3A. The site-specific compliance schedule achieves final compliance with all applicable requirements no later than December 19, 2000, the same date as required for all other MWC units subject to subpart FFF.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)). Docket numbers A–89–08 and A–90–45 contain the supporting information for the December 19, 1995 emission guidelines. Because the MWC Federal plan implements the emission guidelines, these dockets also contain the supporting information for the MWC Federal plan. Public comments received on the MWC Federal plan are included in docket number A–97–45.

B. Paperwork Reduction Act

The information collection requirements in the MWC Federal plan have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer by mail at

the U.S. Environmental Protection Agency; Office of Environmental Information, Collection Strategies Division (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at ''farmer.sandy@epa.gov'', or by calling (202) 260–2740. A copy may also be downloaded off the internet at ''http://www.epa.gov/icr''. OMB approved ICR 1847.01 in December 1998 and the OMB approval number is #20600390.

Today's direct final rule will have no effect on the estimates of the information collection burden. The technical changes clarify requirements and do not impose additional requirements. Therefore, we have not revised the ICR.

C. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's direct final rule includes only minor amendments. Therefore, we have determined that this action is not significant and OMB has waived review. OMB determined that the promulgated Federal plan was ''not significant'' under Executive Order 12866. The promulgated Federal plan simply implements the 1995 MWC emission guidelines (as amended in 1997) and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 MWC emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (*see* 60 FR 65405).

D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. The Federal plan adopted on November 12, 1998 does not significantly or uniquely affect communities of Indian tribal governments. We believe that no large MWC units are located in Indian country. In addition, we have determined that the promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. (See the discussion above on Executive Order 12875 in this section.) Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires EPA to prepare a regulatory flexibility analysis of any rule subject to notice and comment under the Administrative Procedure Act or any other statute unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business in this industry with a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town school district or special district or a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

Today's action is not subject to the requirements of the RFA as modified by SBREFA because it only makes minor technical amendments to some of the rule's requirements and it does not impose any additional requirements. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). The EPA has concluded that these amendments to the MWC Federal plan will not have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least

burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, the requirements of sections 202 and 205 of the UMRA do not apply to this action. The EPA has likewise determined that today's amendments to the rule do not include regulatory requirements that would significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

G. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule, its amendments, and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 24, 2000.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

Today's action does not amend or modify technical standards, therefore, the requirements of the NTTAA do not apply.

I. Executive Order 13045—Protection of Children and Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. Further, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This rule is based on technology performance and not on health or safety risks.

J. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This direct final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule clarifies the final compliance date, updates the status of which MWC units are affected by the Federal plan, and adds a site-specific compliance schedule for one MWC unit. These amendments would primarily affect private industry, and do not impose significant economic costs on State or local governments.

Although section 6 of Executive Order 13132 does not apply to these proposed amendments, EPA consulted with representatives of State and local governments during development of the Federal plan to enable them to provide meaningful and timely input (see 63 FR 63201, November 12, 1998).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 2, 2000.

Carol M. Browner,

Administrator.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671 *et seq.*

Subpart C—Alaska

2. Amend subpart C by adding an undesignated center heading and § 62.354 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.354 Identification of plan—negative declaration.

Letter from the Department of Environmental Conservation submitted June 30, 1997 certifying that there are no existing municipal waste combustor units in the State of Alaska that are subject to part 60, subpart Cb, of this chapter.

Subpart D—Arizona

3. Amend subpart D by adding an undesignated center heading, and adding § 62.620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.620 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted June 7, 1996 certifying that there are no existing municipal waste combustor units in the State of Arizona that are subject to part 60, subpart Cb, of this chapter.

Subpart E—Arkansas

4. Amend subpart E by adding an undesignated center heading and adding § 62.875 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.875 Identification of plan—negative declaration.

Letter from the Department of Pollution Control and Ecology submitted July 1, 1997 certifying that there are no existing municipal waste combustor units in the State of Arkansas that are subject to part 60, subpart Cb, of this chapter.

5. Amend subpart G by adding a title, adding an undesignated center heading, and adding § 62.1370 to read as follows:

Subpart G—Colorado

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.1370 Identification of plan—negative declaration.

Letter from the Department of Public Health and Environment submitted July 30, 1996 certifying that there are no existing municipal waste combustor units in the State of Colorado that are subject to part 60, subpart Cb, of this chapter.

Subpart I—Delaware

6. Amend subpart I by adding an undesignated center heading and adding § 62.1960 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.1960 Identification of plan—negative declaration.

Letter from the Department of Natural Resources and Environmental Control submitted March 26, 1996 certifying that there are no existing municipal waste combustor units in the State of Delaware that are subject to part 60, subpart Cb, of this chapter.

Subpart J—District of Columbia

7. Amend subpart J by adding an undesignated center heading and adding § 62.2130 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.2130 Identification of plan—negative declaration.

Letter from the Department of Consumer and Regulatory Affairs submitted July 6, 1992 certifying that there are no existing municipal waste combustor units in the District of Columbia that are subject to part 60, subpart Cb, of this chapter.

Subpart N—Idaho

8. Amend subpart N by adding an undesignated center heading and adding § 62.3130 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.3130 Identification of plan—negative declaration.

Letter from the Department of Health and Welfare submitted October 28, 1996 certifying that there are no existing municipal waste combustor units in the State of Idaho that are subject to part 60, subpart Cb, of this chapter.

Subpart S—Kentucky

9. Amend subpart S by adding an undesignated center heading and adding § 62.4370 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4370 Identification of plan—negative declaration.

Letter from the Department for Environmental Protection submitted December 18, 1996 certifying that there are no existing municipal waste combustor units in the State of Kentucky that are subject to part 60, subpart Cb, of this chapter.

Subpart T—Louisiana

10. Amend subpart T by adding an undesignated center heading and adding § 62.4650 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.4650 Identification of plan—negative declaration.

Letter From the Department of Environmental Quality submitted May 21, 1996 certifying that there are no existing municipal waste combustor units in the State of Louisiana that are subject to part 60, subpart Cb, of this chapter.

Subpart Z—Mississippi

11. Amend subpart Z by adding § 62.6125 to read as follows:

§ 62.6125 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted September 24, 1997 certifying that there are no existing municipal waste combustor units in the State of Mississippi that are subject to part 60, subpart Cb, of this chapter.

Subpart BB—Montana

12. Amend subpart BB by adding an undesignated center heading, and adding § 62.6620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.6620 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted June 3, 1997 certifying that there are no existing municipal waste combustor units in the State of Montana that are subject to part 60, subpart Cb, of this chapter.

Subpart DD—Nevada

13. Amend subpart DD by adding an undesignated center heading, and adding § 62.7120 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.7120 Identification of plan—negative declaration.

Letter from the Nevada Division of Environmental Protection submitted March 26, 1997 certifying that there are no existing municipal waste combustor units in the State of Nevada that are subject to part 60, subpart Cb, of this chapter.

14. Amend subpart GG by adding an undesignated center heading and adding § 62.7857 to read as follows:

Subpart GG—New Mexico

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.7857 Identification of plan—negative declaration.

Letter from the Environment Department submitted January 10, 1997 certifying that there are no existing municipal waste combustor units in the State of New Mexico that are subject to part 60, subpart Cb, of this chapter.

Subpart JJ—North Dakota

15. Amend subpart JJ by adding an undesignated center heading and adding § 62.8620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.8620 Identification of plan—negative declaration.

Letter from the Department of Health submitted May 1, 1996 certifying that there are no existing municipal waste combustor units in the State of North Dakota that are subject to part 60, subpart Cb, of this chapter.

Subpart NN—Pennsylvania

16. Amend subpart NN by adding an undesignated center heading and adding § 62.9643 and 62.9644 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.9643 Identification of plan—negative declaration.

Letter from the Allegheny County Health Department submitted March 14, 1996 certifying that there are no existing municipal waste combustor units in Allegheny County that are subject to part 60, subpart Cb, of this chapter.

§ 62.9644 Identification of plan—negative declaration.

Letter from the City of Philadelphia Department of Public Health submitted February 14, 1997 certifying that there are no existing municipal waste combustor units in the City of Philadelphia that are subject to part 60, subpart Cb, of this chapter.

Subpart QQ—South Dakota

17. Amend subpart QQ by adding an undesignated center heading, and adding § 62.10370 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.10370 Identification of plan—negative declaration.

Letter from the Department of Environment and Natural Resources submitted June 20, 1997 certifying that there are no existing municipal waste combustor units in the State of South Dakota that are subject to part 60, subpart Cb, of this chapter.

Subpart SS—Texas

18. Amend subpart SS by adding an undesignated center heading and adding § 62.10890 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.10890 Identification of plan—negative declaration.

Letter from the Texas Natural Resource Conservation Commission submitted May 13, 1997 certifying that there are no existing municipal waste combustor units in the State of Texas that are subject to part 60, subpart Cb, of this chapter.

Subpart TT—Utah

19. Amend subpart TT by adding an undesignated center heading and adding § 62.11130 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.11130 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted June 16, 1997 certifying that there are no existing municipal waste combustor units in the State of Utah that are subject to part 60, subpart Cb, of this chapter.

Subpart XX—West Virginia

20. Amend subpart XX by adding an undesignated center heading and adding § 62.12110 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.12110 Identification of plan—negative declaration.

Letter from the Division of Environmental Protection submitted March 11, 1996 certifying that there are no existing municipal waste combustor units in the State of West Virginia that are subject to part 60, subpart Cb, of this chapter.

Subpart YY—Wisconsin

21. Amend subpart YY by adding an undesignated center heading and adding § 62.12360 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.12360 Identification of plan—negative declaration.

Letter from the Department of Natural Resources submitted September 26, 1997 certifying that there are no existing

municipal waste combustor units in the State of Wisconsin that are subject to part 60, subpart Cb, of this chapter.

Subpart ZZ—Wyoming

22. Amend subpart ZZ by adding an undesignated center heading and adding § 62.12620 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.12620 Identification of plan—negative declaration.

Letter from the Department of Environmental Quality submitted October 29, 1996 certifying that there are no existing municipal waste combustor units in the State of Wyoming that are subject to part 60, subpart Cb, of this chapter.

Subpart BBB—Puerto Rico

23. Amend subpart BBB by adding an undesignated center heading and adding § 62.13104 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.13104 Identification of plan—negative declaration.

Letter from the Office of the Governor submitted December 12, 1996 certifying that there are no existing municipal waste combustor units in the Territory of Puerto Rico that are subject to part 60, subpart Cb, of this chapter.

Subpart CCC—Virgin Islands

24. Amend subpart CCC by adding an undesignated center heading and adding § 62.13354 to read as follows:

Emissions From Existing Municipal Waste Combustors With the Capacity To Burn Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.13354 Identification of plan—negative declaration.

Letter from the Department of Planning and Natural Resources submitted September 29, 1997 certifying that there are no existing municipal waste combustor units in the Territory of Virgin Islands that are subject to part 60, subpart Cb, of this chapter.

25. Amend table 1 of subpart FFF by adding the following five entries in alphabetical order.

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF[1]

State	MWC units
Alabama	Existing facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Solid Waste Disposal Authority of the City of Huntsville, Alabama.
* * * * * * *	
Maine	Existing facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Penobscot Energy Recovery Company, Orrington, Maine. (b) Maine Energy Recovery Company, Biddeford, Maine. (c) Regional Waste Systems, Inc., Portland, Maine.
Maryland	Existing MWC facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste.
* * * * * * *	
Oklahoma	Existing MWC facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC site: Ogden-Martin Systems of Tulsa, Incorporated, 2122 South Yukon Avenue, Tulsa, Oklahoma.
* * * * * * *	
Pennsylvania	Existing MWC facilities with an MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC site: (a) American Ref-fuel of Delaware Valley, LP (formerly Delaware County Resource Recovery facility), City of Chester, PA. (b) Harrisburg Materials, Energy, Recycling and Recovery Facility, City of Harrisburg, PA. (c) Lancaster County Solid Waste Management Authority, Conoy Township, Lancaster County, PA. (d) Montenay Montgomery Limited Partnership, Plymouth Township, Montgomery County, PA. (e) Wheelabrator Falls, Inc., Falls Township, Bucks County, PA. (f) York County Solid Waste and Refuse Authority, York, PA.
* * * * * * *	

Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA-approved and currently effective State or Tribal plan.

26. Amend table 5 of subpart FFF by revising entry number 1 ''Emission limits for Hg, dioxins/furans'' to read as follows:

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS (POST-1987 MWCs) [a, b]

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction, modification, or reconstruction after June 26, 1987					
1. Emission limits for Hg, dioxin/furan.	NA[c]	NA[c]	NA[c]	NA[c]	11/12/99 or 1 year after permit issuance [d, e]
* * * * * * *					

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in table 6 of this subpart.
[b] As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.
[c] Because final compliance is achieved in 1 year, no increments of progress are required.
[d] Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.
[e] Final compliance must be achieved no later than December 19, 2000, even if the date ''1 year after permit issuance'' exceeds December 19, 2000.

27. Amend table 6 of subpart FFF by revising the table headings, adding a footnote ''c'' and adding a new entry at the end of the table to read as follows:

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS [a]

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance [c]
* * * * *		*		*	*	
New Hanover County, Unit 3A	Wilmington, North Carolina	09/15/99	03/01/00	07/01/00	11/19/00	12/19/00

[a] These schedules have been reviewed and determined to be acceptable by EPA.
[b] This schedule applies to HCl, SO2, PM, Pb, Cd, CO, and NO_x. However, owners and operators of large MWC units in New Jersey have the option of reserving the portion of their control plan that addresses NO_x. Owners and operators must submit the reserved portion to EPA by December 15, 1999.
[c] The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve final compliance with the mercury and dioxins/furans limits within 1 year after promulgation of subpart FFF (i.e., by 11/12/99) or 1 year after permit issuance. Permit issuance is issuance of a revised construction permit or revised operating permit if a permit modification is required to retrofit controls. Final compliance must be achieved no later than December 19, 2000, even if the date ''1 year after permit issuance'' exceeds December 19, 2000.

[FR Doc. 00–11811 Filed 5–23–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301001; FRL–6556–9]

RIN 2070–AB78

Mancozeb; Re-establishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate (EBDC), and its metabolite ethylenethiourea (ETU) in or on ginseng at 2.0 part per million (ppm) for an additional 20–month period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's receipt of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) seeking use of the pesticide on ginseng. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective May 24, 2000. Objections and requests for hearings, identified by docket control number OPP–301001, must be received by EPA on or before July 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301001 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected

categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301001. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of mancozeb and ETU in or on ginseng at 2.0 ppm, with an expiration date of December 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of mancozeb on ginseng for this year's growing season due to continued disease pressure on the crop from leaf and stem blight. After having reviewed the submission, EPA concurs that emergency conditions exist and has determined that it is appropriate to re-establish the time-limited tolerance.

EPA assessed the potential risks presented by residues of mancozeb and ETU in or on ginseng. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of October 9, 1998 (63 FR 54362). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 20–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on ginseng after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301001 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 24, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in

40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301001, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.176 [Amended]

2. In § 180.176, amend the table in paragraph (b) by revising the date ''12/31/99'' to read ''12/31/01''.

[FR Doc. 00–12524 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300999; FRL–6555–1]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebufenozide [benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide], in or on the tree nut crop group (including pistachios) at 0.1 part per million (ppm) and on almond hulls at 25 ppm. Rohm and Haas Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 24, 2000. Objections and requests for hearings, identified by docket control number OPP–300999, must be received by EPA on or before July 24, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300999 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–6411 and e-mail address: tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing
Agricultural Stakeholders		Growers/Agricultural Workers, Contractors (Certified/Commercial Applicators, Handlers, Advisors, etc.), Commercial Processors, Pesticide Manufacturers, User Groups, Food Consumers
Food Distributors		Wholesale Contractors, Retail Vendors, Commercial Traders/Importers
Inter governmental Stakeholders		State, Local, and/or Tribal Government Agencies
Foreign Entities		Governments, Growers, Trade Groups, Exporters

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300999. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 19, 1998 (63 FR 44439) (FRL 6019–6), and February 17, 1999 (64 FR 7883) (FRL 6060–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 7F4815 for a tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, 19106–2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.482 be amended by establishing tolerances for residues of the insecticide tebufenozide in or on the tree nut crop group (including pistachios) at 0.1 ppm and on almond hulls at 25 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish tolerances (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through food and drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of tebufenozide on the tree nut crop group (including pistachios) at 0.1 ppm and on almond hulls at 25 ppm. EPA's assessment of the exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity*— i. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5 grams for males and females—Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligrams/kilogram (mg/kg) for males and females—Toxicity Category III; inhalation LC_{50} in the rat is >4.5 milligram/Liter (mg/L) - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit >5 mg/kg—Toxicity Category IV. Tebufenozide is not a sensitizer.

ii. In a 21–day dermal toxicity study, Crl:CD rats (6/sex/dose) received repeated dermal administration of either the technical (96.1%) product (RH–75,992) at 1,000 (mg/kg/day) (Limit-Dose) or the formulation (23.1% active ingredient (a.i.)) product (RH–755,992 2F) at 0, 62.5, 250, or 1,000 milligram/kilogram/day (mg/kg/day), 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH–75,992 Technical or RH–75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HDT) 1,000 mg/kg during the 21–day study. Based on these results, the no-observed adverse effect level (NOAEL) for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A lowest-observed

adverse effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

iii. A 1–year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

iv. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

v. A 2–year rat carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively)

vi. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group), tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

vii. In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group), tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7–19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

viii. In a 1993 2-generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystopia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

ix. In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

x. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

xi. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3–6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH–5992, ^{14}C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of absorption was not established. The majority of the radio labeled material was eliminated or excreted in the feces within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

xii. The absorption and metabolism of tebufenozide were studied in a group of males and female bile-duct cannulated rats. Over a 72–hour period, biliary excretion accounted for 30% females to 34% males of the administered dose while urinary excretion accounted for $\simeq$55% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus, systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% females to 39% males. The majority of the radioactivity in the bile (20% females to 24% males of the administered dose) was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount (67% males to 70% females) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified (i.e. -unabsorbed compound) nor were the primary oxidation products seen in the

feces in the pharmacokinetics study. The proposed metabolic pathway proceeded by primary oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (males and/or females). Bile also contained the previously undetected (in the pharmacokinetics study) ''A'' Ring ketone and the ''B'' Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for ≈17% of the total administered dose. No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

2. *Short- and intermediate-term toxicity*. No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit-Dose) as well as a formulated (23% active ingredient (a.i)) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21–day period. The Agency noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligible.

3. *Chronic toxicity*. EPA has established the chronic population adjusted dose (cPAD) for tebufenozide at 0.018 mg/kg/day. This reference dose (RfD) is based on a NOAEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the chronic toxicity study in dogs where the NOAEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver at 8.7 mg/kg/day. EPA determined that the 10x factor to protect children and infants (as required by FQPA) should be reduced to 1x. Therefore, the cPAD is the same as the RfD: 0.018 mg/kg/day.

4. *Carcinogenicity*. Tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' chemical by EPA.

C. Exposures and Risks

1. *Dietary*— i. *From food and feed uses*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action tolerances will be established for the residues of tebufenozide in or on the tree nut crop group including pistachios at 0.1 ppm, and on almond hulls at 25.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not under estimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

a. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Neither neurotoxicity nor systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rabbits. This risk is considered to be negligible.

b. *Chronic exposure and risk*. In conducting the DEEM (Dietary Exposure Evaluation Model) analysis for chronic exposure to and risk from tebufenozide residues in food, the Agency used tolerance level residues and some PCT (Tier 2). For the subject crops, the tolerances used are: 0.1 ppm for tree nuts (including pistachios) and 25.0 ppm for almond hulls. The analysis evaluates individual food consumption as reported by respondents in the USDA, Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. Summaries of the exposures and their representations as percentages of the cPAD for the general population and subgroups of interest are presented in Table 1.

TABLE 1. CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM FOR TEBUFENOZIDE

Population subgroup	Exposure (mg/kg/day)	cPAD%
U.S. population (48 continguous states).	0.0026	14%
Non-nursing infants (<1 years old).	0.0097	54%
Females (13+/nursing).	0.0024	13%

In the table, ''cPAD%'' means cPAD% = Exposure x 100% divide by cPAD.

The subgroups listed above are: (1) The U.S. population (48 continguous states); (2) highest exposed population subgroup that includes infants and children; and (3) females 13+.

This chronic dietary (food only) risk assessment should be viewed as conservative. Further refinement using anticipated residue values and additional PCT information would result in a lower estimate of chronic dietary exposure from food.

The estimates of PCT were used as follows. In all cases the maximum estimates were used.

Crop	Average	Maximum
Almonds	<1%	<1%
Apples	1%	2%
Beans/Peas, Dry	0%	1%
Cabbage, Fresh	2%	3%
Cole Crops	1%	2%
Cotton	1%	4%
Spinach, Fresh	2%	3%
Spinach, Processed.	20%	29%
Sugarcane	3%	5%
Walnuts	10%	16%

ii. *From drinking water*— a. *Acute exposure and risk*. Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

b.*Chronic exposure and risk*. The Agency calculated the Tier I Estimated Environmental Concentrations (EECs) for tebufenozide using generic expected environmental concentration (GENEEC) (surface water) and screening concentration in ground water (SCI–GROW) (ground water) models for use in the human health risk assessment. For chronic exposure, the worst case EECs for surface water and ground water

were 16.5 parts per billion (ppb) and 1.04 ppb, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water. These modeling data were compared to the chronic drinking water levels of comparison (DWLOC) for tebufenozide in ground and surface water (SOP for Drinking Water Exposure and Risk Assessments, November 20, 1997).

For purposes of chronic risk assessment, the estimated maximum concentration for tebufenozide in surface and ground waters (16.5 ppb=16.5 µg/L) was compared to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in Table 2.

TABLE 2. DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO TEBUFENOZIDE[1]

Population Category[2]	Chronic RfD (mg/kg/day)	Food exposure (mg/kg/day)	Max. water exposure[3] (mg/kg/day)	DWLOC [4,5,6] (µg/L)	EEC[7] calc. max. (µg/L)
U.S. population (48 continguous states)	0.018	0.0026	0.0154	540	16.5
Females (13+ years)	0.018	0.0024	0.0156	470	16.5
Non-nursing infants (<1 year)	0.018	0.0097	0.0083	83	16.5

[1]Values are expressed to 2 significant figures.
[2]Within each of these categories, the subgroup with the highest food exposure was selected.
[3]Maximum water exposure (chronic) (mg/kg/day) = Chronic PAD (mg/kg/day)—Food exposure (mg/kg/day).
[4]DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10^{-3} mg/µg) x water consumed daily (L/day)].
[5]HED Default body weights are: General U.S. population, 70 kg; females (13+ years old), 60 kg; other adult populations, 70 kg; and, all infants/children, 10 kg.
[6]HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.
[7]EEC: Estimated Environmental Concentration. (Chronic 56-day value).

2. *From non-dietary exposure*. There is a potential for occupational exposure to tebufenozide during mixing, loading, and application activities. However, the Agency did not identify dermal or inhalation endpoints for tebufenozide and determined that risks from these routes of exposure are negligible.

3. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. The Agency did not identify an acute dietary toxicological endpoint, therefore, the risk from this route of exposure is negligible.

2. *Chronic risk*. Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, the Agency has concluded that dietary (food only) exposure to tebufenozide will utilize 14% of the cPAD for the U.S. population, and 54% of the cPAD for the most highly exposed population subgroup (non- nursing infants <1 yr). EPA generally has no concern for exposures below 100% of the cPAD. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than the Agency's DWLOCs. There are no chronic non- occupational/ residential exposures expected for tebufenozide. Therefore, the Agency concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

3. *Short- and intermediate-term risk*. There are potential non-occupational/ residential short-term post application exposures (incidental non-dietary ingestion) to toddlers from the use of tebufenozide on ornamentals. However, since the Agency did not identify acute dietary endpoint, the short-term post application exposure risk assessment is expected to be negligible. Intermediate-term incidental non-dietary exposures are not expected.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA

believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Conclusion*. There is a complete toxicity data base for tebufenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. For the reasons summarized above, the Agency concludes that an additional safety factor is not needed to protect the safety of infants and children.

3. *Acute risk*. Since no acute toxicological endpoints were established, it is unlikely that acute aggregate risk exists.

4. *Chronic risk*. Using the exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, the Agency has concluded that dietary (food only) exposure to tebufenozide will utilize 14% of the cPAD for the U.S. population, and 54% of the cPAD for the most highly exposed population subgroup (non-nursing infants <1 yr). EPA generally has no concern for exposures below 100% of the cPAD. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary, non- occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

5. *Short- or intermediate-term risk*. Short- and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. Nature of the residue—Plants. The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. The Agency has concluded that the residue of regulatory concern is tebufenozide *per se*.

2. Nature of the residue—Animal. The results of the ruminant and poultry metabolism studies have been reviewed by the Agency and the determination was made that the tebufenozide residues of regulatory concern in animals are the parent tebufenozide and the four metabolites designated: RH–2703 [benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide], RH–9886 [benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide], the stearic acid conjugate of RH–9886, and RH–0282 [benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1- dimethylethyl)-2-(4-(1-hydroxyethyl) benzoyl)hydrazide].

B. Analytical Enforcement Methodology

1. *Analytical methods—Plant tissues*. The Rohm and Haas method TR 34–95–20, with minor modifications, was used to determine tebufenozide residue levels in/on pecans and almonds (MRID 44414304). This method has been validated by EPA and was submitted to the Food and Drug Administration (FDA) for inclusion in PAM II. The method limit of quantitation (LOQ) and limit of detection (LOD) for tebufenozide are 0.01 ppm and 0.003 ppm, respectively.

2. *Analytical methods—Animal tissues*. A submitted HPLC/UV Method, Rohm and Haas Method TR 34–96–109, has been determined to be adequate for collecting data on residues of tebufenozide in animal tissues. The validated LOQ for tebufenozide in animal tissue is 0.02 ppm. The LOQ for each of the metabolites studied are as follows: RH–2703 in liver, 0.02 ppm; RH–9886 and RH–0282 in meat, 0.02 ppm; RH–9526 in fat, 0.02 ppm. The LODs for the analytes are 0.006 ppm in tissues.

3. *Multi-residue methods*. Rohm and Haas has previously submitted data involving multi-residue method testing.

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

1. The petitioner submitted data from tests on pecans, almonds, and almond hulls. A bridging study was also submitted showing that there were no differences in the amount of RH–5992 residues on pecans (nutmeat) from the two formulations. Residues of tebufenozide were determined in/on nuts harvested 11–14 days following the last of 4 foliar applications of tebufenozide for a total of ~2.0 lbs ai/acre per season (1x the proposed seasonal rate). Tebufenozide residues in/on pecans were below the LOQ of 0.01 ppm: values ranged from <0.003 ppm (the LOD) to 0.0058 ppm. Tebufenozide residues in/on almonds were < 0.003–0.052 ppm, and in/on almond hulls were 7.880–19.9 ppm.

2. The inclusion of pistachios into the tree nut crop group without a change in the representative crops, pecans and almonds, has been recommended but has not as yet been published. The submitted pecan, almond, and almond hull field trial residue studies are adequate to support the proposed 0.1 ppm tolerance for the tree nut crop group including pistachios and the 25.0 ppm tolerance for almond hulls.

3. *Processed food/feed*. There are no tree nut (including pistachio) processed commodities of regulatory interest.

D. International Residue Limits

Codex MRLs have been established for residues of tebufenozide in/on pome fruit (1.0 ppm), husked rice (0.1 ppm) and walnuts (0.05 ppm). Tebufenozide is registered in Canada, and a tolerance for residues in/on apples is established at 1.0 ppm. EPA has set the pome fruit tolerance at 1.0 ppm to harmonize with the Codex and Canadian levels.

E. Rotational Crop Restrictions

Since tree nuts and pistachios are perennial crops, rotational crop restrictions are not required for the tree nut crop group and pistachios.

V. Conclusion

Therefore, the tolerances are established for residues of tebufenozide, in or on the tree nut crop group (including pistachios) at 0.1 ppm, and on almond hulls at 25 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an

exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300999 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 24, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300999, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the

development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.482, by alphabetically adding the following entries to the table in paragraph (a)(1) to read as follows.

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(a) *General.* (1) ***

Commodity	Parts per million
* * * *	*
Almond hulls	25
* * * *	*
Tree nut crop group including pistachios	0.1
* * * *	*

[FR Doc. 00–13071 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 515, 545

[Docket No. 00–06]

Interpretations and Statements of Policy Regarding Ocean Transportation Intermediaries

AGENCY: Federal Maritime Commission.

ACTION: Interpretive rule.

SUMMARY: The Federal Maritime Commission amends its regulations for interpretive statements of policy to interpret a section of its regulations regarding ocean transportation intermediaries to clarify the claim settlement procedures.

DATES: This rule is effective June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St. NW, Room 1018, Washington, DC 20573–0001; (202) 523–5740.

SUPPLEMENTARY INFORMATION: On March 8, 1999, the Federal Maritime Commission published a final rule and interim final rule to add new regulations at 46 CFR part 515 to implement changes made by the Ocean Shipping Reform Act of 1998 (''OSRA''), Public Law 105–258, 112 Stat. 1902, to the Shipping Act of 1984 (''Shipping Act''), 46 U.S.C. app. 1701 *et seq.*, relating to ocean transportation intermediaries (''OTIs''). 64 FR 11156–11183. Section 515.23(b) sets forth the claim settlement procedure for claimants seeking to pursue a claim against an OTI. The Interpretive Rule seeks to clarify the Commission's intention with respect to this procedure, as there have been reported misunderstandings in the industry as to the responsibilities inherent in this requirement.

Section 515.23(b)(1) sets forth the claim settlement procedures and provides, in part, that:

If a party does not file a complaint with the Commission pursuant to section 11 of the Act, but otherwise seeks to pursue a claim against an ocean transportation intermediary bond, insurance or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained.

It is the Commission's intention that a claimant seeking to settle a claim in accordance with this section should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim. The information relevant to the claim settlement procedure includes documents such as bills of lading, as well as the existence of pending court claims or judgments obtained.

In addition, the financial responsibility provider is allowed to evaluate the validity of the claim during the settlement process in § 515.23(b)(1). However, if the parties do not reach a settlement of the claim, the financial responsibility provider, in accordance with section 19 of the Shipping Act, 46 U.S.C. app. 1718 (1999), and 46 CFR 515.23(b)(2), must pay on a final judgment and may only inquire into the extent that the damages claimed arise from the transportation-related activities of the OTI, under section 3(17) of the Shipping Act, 46 U.S.C. app. 1702(17).

Furthermore, if settlement of the claim is not reached, the financial responsibility provider may not unilaterally reduce the amount awarded in a final court judgment; Congress has determined that, at that point, a financial responsibility provider must pay on a final judgment for damages arising from the transportation-related activities of the OTI, and the Commission cannot nullify that statutory requirement. However, the financial responsibility provider and the claimant are not precluded from mutually agreeing to compromise the amount awarded in a final judgment. In the event that the financial responsibility provider believes that a judgment against its OTI bond principal was obtained fraudulently, or that the claim underlying the judgment is itself fraudulent, the financial responsibility provider is not precluded from challenging a judgment if permitted in the jurisdiction where it was obtained.

Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the New Rule.

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the final rulemaking.

List of Subjects

46 CFR Part 515

Exports, Freight, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

46 CFR Part 545

Antitrust, Exports, Freight forwarders, Maritime carriers, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR chapter IV, subchapter B, as set forth below:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553, 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

2. In § 515.23, revise the introductory text to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

The Commission or another party may seek payment from the bond, insurance, or other surety that is obtained by an ocean transportation intermediary pursuant to this section. (*See also* § 545.3 of this chapter.)

* * * * *

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

1. The authority citation for part 545 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1706, 1707, 1709, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 46 CFR 515.23.

2. Add § 545.3 to read as follows:

§ 545.3 Interpretation of § 515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.

A claimant seeking to settle a claim in accordance with § 515.23(b)(1) of this chapter should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–13088 Filed 5–23–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 54

[CC Docket No. 95–20, FCC 99–387]

Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; Clarification

AGENCY: Federal Communications Commission.

ACTION: Clarification of final rule.

SUMMARY: This document grants in part and denies in part a petition to reconsider the Commission's Computer III Remand Order, stating that the Bell Operating Companies (BOCs) should no longer be required to file service-specific Comparably Efficient Interconnection (CEI) plans for information services that are offered on an integrated basis through the regulated entity and obtain approval of those plans prior to initiating or altering their intraLATA information services. This document clarifies that BOCs are obligated to post on their websites a complete copy of all their CEI plans.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ann Stevens, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted December 9, 1999, and released December 17, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at *http://www.fcc.gov/Bureaus/CommonCarrier/ Orders/fcc99–387.wp,* or may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Regulatory Flexibility Certification

Bell Atlantic and SBC submitted comments on July 12, 1999 and CIX and BellSouth Corporation filed replies to the comments to the Commission's request for comment on its certification. In this present Order , the Commission promulgates no additional final rules, and our action does not affect the previous analysis.

Synopsis of Order on Reconsideration

1. In this Order, we address a petition for reconsideration or clarification of the Computer III Remand Order, CC Docket No. 95–20, FCC 99–387, filed by Commercial Internet eXchange Association (CIX).

2. The Commission concluded in that order that although the BOCs must continue to comply with their CEI obligations, they should no longer be required to file or obtain pre-approval of CEI plans and plan amendments before initiating or altering their intraLATA information services. Instead, we required the BOCs to ''post on their publicly accessible Internet page, linked to and searchable from the BOCs main Internet page, their CEI plan for any new or altered intraLATA information service offering, and to notify the Common Carrier Bureau upon such posting.

3. CIX filed a petition for reconsideration or clarification of two aspects of two aspects of the Computer III Report and Order, 64 FR 14141 (3/24/99). CIX first asks that the Commission establish that incumbent LECs must disclose in advance and via their web sites the planned deployment of digital subscriber line access multiplexers (DSLAMs) on a wire-center basis, and provide adequate prior notice on the status of line conditioning for a given customer or group of customers. Information on the deployment of broadband telecommunications, CIX continues, should be available to all competing information services providers (ISPs), and should not be used as a means to favor the incumbent's affiliated ISP. CIX also asks that the Commission clarify that the BOCs are obligated to post a complete copy of all their CEI plans on their websites, so that all ISPs have ready information available concerning interconnection with the BOC's ''last mile'' network.

II. Discussion

4. The Commission has reviewed the initial request made by CIX in its petition—that we clarify our network information disclosure rules to require incumbent local exchange carriers to provide information regarding DSLAMs and line conditioning to ISPs. CIX essentially asks the Commission to clarify that section 251(c)(5) of the Communications Act and the rules implementing that section require disclosure of such information. We decline to do so. The Commission did not raise this issue in the Further Notice of Proposed Rulemaking in these dockets. Thus, the CIX request for clarification with regard to information on deployment of DSLAMs and line conditioning is beyond the scope of this proceeding. Accordingly, we deny that request for clarification on reconsideration.

5. CIX next requests that the Commission clarify that the BOCs are obligated to post on their websites a complete copy of all their CEI plans—rather than merely a copy of ''new or altered'' plans. We grant this request. It was not our intention in the Computer III Report and Order to exclude from the CEI posting requirement the BOCs' existing plans. As CIX notes in its petition, it is important for all CEI plans to be available on the BOCs' websites, including those previously filed plans. Otherwise, it would be difficult for the ISPs to get information regarding plans filed with the Commission under the prior CEI regime. Moreover, we do not believe that requiring the BOCs to post all their plans and plan amendments—both old and new—is unduly burdensome, especially given the benefit of having all these plans in one, easily accessible place. Accordingly, we clarify that the BOCs must post all their existing and new CEI plans and plan amendments on their Internet websites and notify the Common Carrier Bureau at the time of the posting.

III. Ordering Clause

6. The petition for reconsideration and clarification filed by the Commercial Internet eXchange Association IS GRANTED IN PART and IS DENIED IN PART, to the extent discussed above.

Federal Communications Commission
Magalie Roman Salas,
Secretary.

[FR Doc. 00–13039 Filed 5–23–00; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 00–7364]

RIN 2127–AG96

Consumer Information Regulations: Uniform Tire Quality Grading Test Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the treadwear testing procedures under the Uniform Tire Quality Grading Standards (UTQGS). To ensure the consistency of the treadwear grades from one year to the next, the agency monitors the changing roughness of the test course, periodically calculates a base course wear rate (BCWR), and uses it to adjust the measured wear rates of tires driven over the course. To monitor the test course, the agency uses special tires designated as course monitoring tires (CMTs).

The agency is amending the UTQGS to change the computation of the BCWR used in calculating the treadwear grade of passenger car tires. These amendments establish a direct comparison of the wear rates of CMTs used as the control standard with the wear rates of the candidate tires, *i.e.,* the tires being tested for the purposes of grading. This direct comparison will result in more consistent treadwear ratings by compensating for any changes or variations in CMT characteristics. NHTSA will measure the wear rate of CMTs 4 times per year and use the average wear rate from the last 4 quarterly CMT tests as a basis for the BCWR. NHTSA is further requiring that CMTs used to determine wear rate be not more than 1 year old at the commencement of the test and that the CMTs used in the test must be used within 2 months after removal from storage.

DATES: Effective date: The amendments in this final rule are effective July 24, 2000.

Petitions for reconsideration of this final rule must be received by NHTSA not later than July 10, 2000.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Sanjay Patel, Safety Standards Engineer, Office of Planning and Consumer Programs, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–0307.

For legal issues: Mr. Stephen P. Wood, Assistant Chief Counsel for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2992.

SUPPLEMENTARY INFORMATION:

A. Background

1. Current Provisions.

Section 30123(e) of title 49, United States Code (U.S.C.) requires the Secretary of Transportation to prescribe a uniform system for grading motor vehicle tires to assist consumers in making informed choices when purchasing tires. In response to that congressional mandate, NHTSA established the Uniform Tire Quality Grading Standards (UTQGS) in 49 CFR 575.104.

The UTQGS require tire manufacturers and tire brand name owners to grade their tires with respect to the tires' relative performance with respect to treadwear, traction, and temperature resistance. Treadwear grades are shown by numbers, such as 100, 160, and 200, with the higher numbers indicating greater treadwear performance. The traction grades are indicated by AA, A, B, and C, with AA representing the highest performance characteristics and C the lowest. The temperature resistance grades are indicated by the letters A, B, and C, with A representing the best performance and C indicating the minimum level of performance necessary to comply with Federal motor vehicle safety standards.

The UTQGS provide that treadwear grades are developed first by running the tires being graded, called ''candidate tires,'' over a selected 400-mile segment of public highway outside San Angelo, Texas. After an 800-mile ''break-in'' run, the candidate tires are driven over the test course for a total of 6,400 miles in test convoys composed of 4 passenger cars and/or light trucks. Each driver remains in the same position within the convoy. The vehicles are regularly rotated among the 4 positions in the convoy as are the positions of the tires on the test vehicles so that each candidate tire gets equal time with each driver, each vehicle, and each wheel position.

Special tires known as ''course monitoring tires'' (CMT) are used as the control in grading candidate tires. CMTs are specially designed and built to American Society for Testing and Materials (ASTM) standard E1136 to have particularly narrow limits of variability.[1] Until the amendments to the UTQGS published in a final rule on September 9, 1996 (61 FR 4737), whenever the agency procured a new batch, or lot, of CMTs, we established a new base course wear rate (BCWR) for that lot. We established the BCWR, measured in mils per thousand miles, by running tires from the new lot of CMTs over the 6,400-mile test course, in the same manner as candidate tires, with tires from the previous batch of CMTs. We determined a course severity adjustment factor (CSAF) for the new CMTs by dividing the BCWR for the old CMTs by the average wear rate of the old CMTs in the test. The wear rate of the new CMTs was then multiplied by the CSAF to determine the adjusted wear rate (AWR) of the new CMTs. That value then became the BCWR for the new CMTs.

Once the BCWR for the new CMTs was established, the new CMTs were used to grade candidate tires. Upon completion of the 6,400-mile test, the BCWR was divided by the average wear rate of the CMTs to determine the CSAF for the candidate tires. That factor was then applied to the wear rates of the candidate tires to obtain the AWR of the candidate tires. That AWR was then extrapolated to the point of wearout (considered to be 1/16th inch of remaining tread depth). The resultant value was then converted to the treadwear rating of the tire.

The BCWR was originally intended to provide a common baseline by which to grade candidate tires by relating all new CMTs to the original lot of CMTs. We noted, however, that the BCWRs of successive new lots of CMTs steadily declined over the years. The trend has been that every time a fresh CMT of the new lot was tested in the same convoy with an old CMT, the fresh CMT consistently experienced a lower wear rate than the old CMT. The first lot of CMTs that we procured in 1975 were commercially-available Goodyear Custom Steelguards that yielded a BCWR of 4.44. The lot of ASTM E–1136 CMTs that we procured in 1995, on the other hand, produced a BCWR of 1.34. Table I shows the consistent decline in wear rate for each new lot of CMTs.

CMT WEAR RATE AND BASE COURSE WEAR RATE ADJUSTMENT FACTORS

Year	Manufacturer	Series	Measured wear rate	CSAF	Adj. wear rate	BCWR
1975	Goodyear	Batch 1	4.44	1.0	4.44	4.44
1979	Goodyear	Batch 1	4.08	1.09	4.44	
1979	Goodyear	Batch 2	3.82	1.09	4.16	4.16
1980	Goodyear	Batch 2	5.29	0.79	4.16	
1980	Goodyear	Batch 3	4.76	0.79	3.74	3.74
1984	Goodyear	Batch 3	4.22	0.89	3.74	
1984	Uniroyal	4000	3.27	0.89	2.90	2.90
1987	Uniroyal	4000	5.96	0.49	2.90	
1987	Uniroyal	71000	4.56	0.49	2.22	2.22
1989	Uniroyal	71000	5.01	0.44	2.22	
1989	Uniroyal	91000	4.84	0.44	2.14	2.14
1991	Uniroyal	91000	6.24	0.34	2.14	
1991	ASTM E1136	010000	4.94	0.34	1.70	1.70
1991	ASTM E1136	010000	6.96	0.24	1.70	
1992	ASTM E1136	110000	6.65	0.24	1.62	1.62
1992	ASTM E1136	110000	5.83	0.28	1.62	
1992	ASTM E1136	210000	5.60	0.28	1.56	1.56
1993	ASTM E1136	210000	7.21	0.22	1.56	
1993	ASTM E1136	310000	6.80	0.22	1.47	1.47
1995	ASTM E1136	310000	6.47	0.23	1.47	
1995	ASTM E1136	410000	5.91	0.23	1.34	1.34

In replacing CMTs from the original lot procured in 1975, we note that the greatest difference in the AWR between nominally identical CMTs of different ages was about 30 percent. This occurred in 1987 when the old CMTs had been stored for about 3 years. The least difference in the AWR between nominally identical CMTs of different ages was about 4 percent that occurred in the second 1992 replacement. At that time, the old CMTs had been stored less than a year. Table I also shows that the treadwear rate disadvantage of the aged CMTs at replacement varied considerably from a linear relationship with age. This could suggest that the rate may have been exacerbated by actual batch differences of the commercial tires used as CMTs prior to 1991.

The significance of the decrease in the BCWR rate is that as the BCWR decreased, the treadwear grades of candidate tires increased. Consequently, the newer treadwear grades have increased to the point that they are no longer a reliable indicator of actual treadwear performance when compared to tires tested with higher BCWRs.

To correct this problem, we froze the BCWR at 1.34 mils in the final rule of September 9, 1996 (61 FR 47437), believing that freezing the BCWR at that figure would significantly reduce, if not eliminate, any variation in the grading between lots. We also believed that the use of ASTM E1136 tires that are produced with strict quality control would also contribute to reduction of any lot-to-lot variations. We stated, however, that we had requested the assistance of the ASTM F9 committee in devising a better treadwear test and that we would request data in a future rulemaking on the effects of tire aging on treadwear performance and storage procedures to reduce aging.

[1] The designation ''E1136'' refers to the standard specification of materials and construction practices codified by ASTM as suitable for control tires for scientific experimentation.

(2) Notice of Proposed Rulemaking

On June 5, 1998, we published a Notice of Proposed Rulemaking (NPRM) proposing to revise the treadwear testing procedures of the UTQGS to ensure the consistency of treadwear grades from one year to the next. [2] To achieve that result, we proposed to revise the procedure for calculating the BCWR by directly comparing the wear rates of CMTs with the wear rates of the candidate tires. Specifically, we proposed to measure the wear rates of CMTs 4 times per year, then use the average wear rate from the last 4 quarterly CMT tests as a basis for the BCWR. We also proposed that CMTs used to determine the wear rate be no more than 6 months old at the commencement of the test and that the difference in production dates of the CMTs being tested be not greater than 3 months. If CMTs being tested were more than 6 months old, we proposed that the average wear rate be reduced by 10 percent.

B. Comments on the NPRM

We received 2 comments on the NPRM, one from the Rubber Manufacturers Association (RMA), and the other from Uniroyal Goodrich Tire Manufacturing (Uniroyal).

1. General

RMA opposed the proposals in the NPRM, stating that our action in freezing the BCWR at 1.34 in the final rule of September 9, 1996 was sufficient to solve the treadwear inflation problem. Uniroyal generally supported the agency's intent in trying to ensure the consistency of the treadwear grades from year to year, but believed that this can be accomplished more efficiently than by the procedures that we proposed.

Both opposed our proposal to require that CMTs be not more than 6 months old when tested to determine the BCWR, arguing that that requirement would increase the costs of production, shipping, and storage for all manufacturers with no additional benefit for consumers. Uniroyal, the sole current manufacturer of E–1136 tires, stated that having to test CMTs that are 6-months old and within 3 months' production dates of each other would mean that testers would specify the most recent CMTs rather than take a chance on reducing their wear rates by 10 percent. This would require that CMTs be produced on a quarterly basis. Uniroyal stated that E–1136 tires are already produced in extremely small quantities and that more frequent production would be logistically impossible. RMA stated that the complexities associated with coordination, production, shipping, storage, and testing of CMTs and candidate tires within a 6-month period is not realistic. Both commenters agreed that the cost and logistical problems of producing E–1136 tires so frequently and in such small quantities would increase the unit cost of such tires by a factor of 3 to 4 and could result in less lot-to-lot consistency.

Both commenters supported a requirement that CMTs be tested within 1 year after production. RMA stated that if the proposals in the NPRM are not withdrawn, it requested that no penalties be applied to tires tested within 1 year of production. RMA argued that the aging characteristics of CMTs and candidate tires would contribute to a ''leveling effect'' which, together with the logistical restrictions of production, shipping, and storage, would minimize any difference in tread life during the first year. RMA stated, however, that for CMTs older than 1 year, any penalty should be no more than 5 percent. Uniroyal recommended that E–1136 CMTs be utilized for testing up to 1 year after production, with no more than 3 months' difference in production dates between the tires tested.

2. Additional Uniroyal Comments

a. Uniroyal suggested using a linear relationship to adjust for aging of CMTs rather the ''step'' function that the agency proposed. Uniroyal referred to NHTSA study DOT HS 808–701, Critical Evaluation of UTQG Treadwear Testing & Methodology, which found an aging effect of approximately 5 percent per year for cave-stored tires and about 10 percent for non-cave-stored tires. Thus, Uniroyal encouraged the continued use of cave storage for CMTs.

Uniroyal recommended that tires used in NHTSA's tests be used as soon as they are received from the cave and the BCWR calculated as follows:

$$ABCWR = BCWR * \left[1 - \frac{TESTWK - DOTWK}{52} CMT * AAF\ c\right]$$

Where:

ABCWR=Adjusted Base Course Wear Rate

BCWR=Base Course Wear Rate

$TESTTWK - DOTWK_{CMT}$=Difference, in weeks, between date at start of test and CMTDOT

AAF c=Age Adjustment Factor for cave-stored tires=0.05

The new adjusted base course wear rate will be obtained by using average wear rate from the last 4 quarterly tests conducted by NHTSA.

(b) Since NHTSA showed in its study that CMTs that were not continually cave-stored aged at twice the rate of those that were, Uniroyal proposed the following calculation for the adjustment factor if the production date of the CMT is older than that of the candidate tire:

$$1 - \frac{DOTWK_{TST} - DOTWK_{CMT}}{52} * AAF\ o$$

Thus, the grade (P) would be computed as follows:

[2] The NPRM originally called for a comment closing date of August 4, 1998. At the request of the Rubber Manufacturers Association, however, we extended the comment period until October 5, 1998 (63 FR 41538, August 4, 1998).

$$P = \frac{\text{Projected Mileage}\left(1 - \left[\frac{DOTWK_{TST} - DOTWK_{CMT}}{52} * AAF\ o\right]\right) * ABCWR}{402}$$

Where:

ABCWR=Adjusted Base Course Wear Rate (from a. above)

$DOTTWK_{TST}$ –

$DOTWK_{CMT}$=Difference, in weeks, between candidate tire and CMT

AAF o=Age Adjustment Factor for tires stored at test site after leaving cave=0.10

If the candidate tire is equal to or older than the CMT tire, no adjustment is made.

c. NHTSA should measure the CMT wear rate at least 4 times per year and include CMTs approximately one year old in their measurements. The inclusion of older CMTs in these measurements would result in a long term record of the aging effect and verify (or not) the approximately 5 percent per year age effect reported in DOT HS 808–701.

C. Discussion

For the past few years, NHTSA has been studying various ways to arrest the consistent decline in the BCWR that we believe has been the primary cause of the inflation that has plagued the treadwear grading system almost from the beginning. That treadwear grade inflation was the basis on which we froze the BCWR at 1.34 mils in the final rule of September 9, 1996 (61 FR at 47441), which became effective March 9, 1998. The elapsed time since then has not given us sufficient data on which to determine whether the freezing of the BCWR has had the desired effect of arresting the treadwear grade inflation altogether, although preliminary indications are that it has had a very positive effect on the problem. In addition to contributing to the arrest of the treadwear grade inflation, however, the procedures specified in this final rule are intended to provide CMT replacement procedures that would be valid in all circumstances. We could use these procedures, for example, if ASTM changed its design specifications of the E–1136 tires; if E–1136 tires became unavailable and we were required to substitute other tires for use as CMTs; or in the event of a significant change in the surface of the test road course. Finally, these procedures will enable us to test the assumption of batch uniformity of ASTM-specification tires.

NHTSA is persuaded by the comments of the RMA and Uniroyal that it is not logistically feasible to produce E–1136 tires as frequently and in such small lots as would be necessary to consistently provide CMTs that are less than 6 months old. We have historically procured about 200 CMTs per year, retaining 12 for our own use and providing the remainder to other testers. In making the CMT test runs 4 times per year, we will now consume 64 CMTs per year, but the other testers are expected to consume about the same number as before. Therefore, the increase in the number of CMTs consumed per year is relatively small and not enough to justify Uniroyal's having to make more production runs of CMTs than before, with the additional logistical problems of lot-to-lot consistency, storage, and shipping.

Because of Uniroyal's production and logistical constraints on the manufacture of E–1136 tires, we have decided that the most practical solution would be to require that CMTs used in establishing the BCWR be less than 1 year old, instead of not more than 6-months old as we proposed. Further, we will not require that the CMTs used in the testing have production dates within 3 months of each other, nor will we require the 10 percent adjustment for tires over the prescribed age since this could create a demand for newer tires that would disrupt Uniroyal's production schedule. We are, however, requiring that CMTs be cave-stored until used [3] and that, in addition to being not more than 1 year old, the CMTs must be used within 2 months after being removed from cave storage. The 2-month requirement is intended to minimize any degradation while in uncontrolled storage conditions. The aging of up to 1 year in the cave could result in a degradation of up to 5 percent, an amount that we have decided to accept under the circumstances as the best compromise available within the economic constraints of the CMT supply system.

Although the rate of treadwear degradation due to aging is not an exact science, our experience has been that tires stored outside the cave degrade at approximately 10 percent per year, while tires stored under the controlled climatic conditions of the cave degrade at a significantly lower rate, no more than a nominal 5 percent. The above computations that Uniroyal suggested would compensate for that possible 5 percent aging degradation, if meticulous records were kept of the amount of time each CMT spent in the cave and in uncontrolled storage and if our estimate of the aging effect were accurate. We believe that the proposed Uniroyal computation is too complicated in relation to the small increase in accuracy. Therefore, for the sake of simplicity and, as stated above, considering that the treadwear measurement is not a precision test, we are willing to accept the possibility of tire degradation of up to 5 percent, which might result in the slight overgrading of candidate tires. Accordingly, we adhere to the formula

P = Projected mileage*BCWRn/402

that we proposed in the NPRM.

In summary, this final rule revises the procedure for measuring the wear rate of CMTs by running them over the test course 4 times per year, then using the average wear rate from the last 4 quarterly CMT test runs as a basis for the BCWR. The CMTs used in the test runs must be not more than 1 year old at the commencement of the test and must be used within 2 months after being withdrawn from storage.

This final rule makes one additional change. NHTSA has been leasing a warehouse to store the CMTs for sale to other testers. Given the amendments made by this final rule, NHTSA need no longer store the CMTs for the testers. They can purchase tires directly from the manufacturer for less than what NHTSA was charging. Accordingly, we are amending 575.104(e)(1)(ii) to delete the sentence stating that CMTs are available from NHTSA.

Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document was not reviewed under Executive Order 12866,

Regulatory Planning and Review

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not ''significant'' under the DOT's regulatory policies and

[3] Uniroyal ships its E–1136 tires immediately after production to a storage facility located in a cave in the Ozark mountains. This facility has a constant temperature of about 60 °F. and is remote from ozone-producing electrical equipment.

procedures. This action changes the calculation for determining the base course wear rate of course monitoring tires which is, in turn, used to determine the treadwear grade of candidate tires under the Uniform Tire Quality Grading Standards. This action does not impose any additional costs on motor vehicle or tire manufacturers, distributors, or dealers. Instead, it permits tire manufacturers greater flexibility in their testing programs and could result in slightly lower costs by permitting them to procure course monitoring tires directly from the manufacturer rather than through NHTSA, as has been the practice in the past. Specifically, NHTSA has been leasing a warehouse to store the CMTs for sale to other testers. We have charged them a markup on each tire to cover our storage and handling expenses. Given the amendments made by this final rule, NHTSA need no longer store the CMTs for the testers. They can purchase tires directly from the manufacturer for less than what NHTSA was charging, which also saves NHTSA the time, trouble, and expense of storage and handling. We estimate that this will save the tire companies approximately $24,000 per year. Accordingly, because the cost savings are minimal, the agency did not prepare a full regulatory evaluation.

b. Regulatory Flexibility Act

The agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this rulemaking action will not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments proposed herein will primarily affect manufacturers of passenger car tires. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business in part as a business entity ''which operates primarily within the United States'' (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies,* has a small business size standard of 1,000 or fewer employees. SIC code No. 3714, Motor Vehicle Parts and Accessories, has a small business size standard of 750 or fewer employees.

The amendments in this rulemaking action merely change the testing procedure for and calculation of the treadwear grade under the Uniform Tire Quality Grading Standards. The purpose of this new procedure is to arrest the treadwear grade inflation that has been experienced over the past several years. The amendments will make it necessary for NHTSA to conduct additional testing to determine the base course wear rate from which treadwear grades are calculated by tire manufacturers. The amendments, however, will not impose any additional requirements or burdens on tire manufacturers, most of which do not qualify as small businesses under SBA guidelines. Thus, the new procedures will not result in any increase in costs for tire manufacturers, small businesses, or consumers. Accordingly, there will not be any significant impact on small businesses, small organizations, or small governmental units by the amendments in this final rule. Thus, the agency has not prepared a final regulatory flexibility analysis. Annual expenditures from this final rule will not exceed the $100 million threshold.

c. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

d. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that this rulemaking action will not have any significant impact on the quality of the human environment.

e. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub.L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

f. Civil Justice Reform

The amendments made by this final rule will not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States government or a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

List of Subjects in 49 CFR Part 575

Consumer information, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 575 is amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 575.104 is amended by revising paragraph (e)(1)(ii), paragraph (e)(2)(ix)(C), and paragraph (e)(2) (ix)(F), to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(e) * * *

(1) * * *

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileages obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy.

* * * * *

(2) * * *

(ix) * * *

(C) Determine the course severity adjustment factor by dividing the base course wear rate for the course monitoring tires (see *Note* to this paragraph) by the average wear rate for the four course monitoring tires.

Note to paragraph (e)(2)(ix)(C): The base wear rate for the course monitoring tires will be obtained by the government by running ASTM E–1136 course monitoring tires for 6,400 miles over the San Angelo, Texas, UTQGS test route 4 times per year, then using the average wear rate from the last 4 quarterly CMT tests for the base course wear rate calculation. Each new base course wear rate will be filed in the DOT Docket

Management section. This value will be furnished to the tester by the government at the time of the test. The course monitoring tires used in a test convoy must be no more than one year old at the commencement of the test and must be used within two months after removal from storage.

* * * * *

(F) Compute the grade (P) of the NHTSA nominal treadwear value for each candidate tire by using the following formula:

P = Projected mileage × base course wear $rate_n$/402

Where base course wear $rate_n$ = new base course wear rate, *i.e.,* average treadwear of the last 4 quarterly course monitoring tire tests conducted by NHTSA.

Round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued on May 11, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–12873 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. No. 112399C]

RIN 0648–AM48

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2000 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, final specifications, and commercial quota adjustment for the 2000 summer flounder, scup, and black sea bass fisheries; notification of commercial quota harvest.

SUMMARY: NMFS issues the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries. The annual specifications for the scup fishery include a new provision to restrict fishing in certain areas during certain time periods to reduce discards of scup in small-mesh fisheries. This action contains preliminary adjustments to the 2000 commercial quotas for the summer flounder, scup, and black sea bass fisheries. This action also prohibits federally permitted commercial vessels from landing summer flounder in the State of Delaware for the year 2000. The intent of this document is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these fisheries.

DATES: Effective 0001 hours, May 24, 2000, through 2400 hours, December 31, 2000.

ADDRESSES: Copies of the Environmental Assessment (EA)/ Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), including the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/ RIR/IRFA is accessible via the Internet at http://www.nero.gov/ro/doc/nr.htm.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978)281–9221, fax (978)281–9135, e-mail regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./ Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. latitude (the latitude of Cape Hatteras Light, NC) northward to the U.S./ Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Regional Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year to assure that the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP is not exceeded. The target F or exploitation rate and management measures are summarized below by species. Detailed background information regarding the development of the proposed specifications was provided in the proposed specifications for the 2000 summer flounder, scup and black sea bass fisheries (65 FR 4547, January 28, 2000), and is not repeated here. NMFS will publish a proposed and final rule for the 2000 recreational management measures for these fisheries in the **Federal Register** at a later date.

On April 25, 2000, during the last stages of review of this final rule, the United States Court of Appeals for the District of Columbia Circuit (Court) issued an opinion on a challenge to the 1999 summer flounder specifications by a number of environmental groups. The Court noted that the 1999 quota, when adopted, had only an 18-percent likelihood of meeting the conservation goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court invalidated the 1999 quota and remanded the case to NMFS for further proceedings. The Court set a minimum standard for harvest quotas to comply with the Magnuson-Stevens Act, namely that quotas must have at least a 50-percent probability of achieving the target fishing mortality rate.

Given the timing of the opinion and the urgency of regulating the ongoing fishery that began in January, after careful consideration, NMFS has concluded that it must have some measures in place establishing quotas for these fisheries. Therefore, rather than leaving the fisheries unregulated while it addresses the Court's remand, NMFS is proceeding with publication of the rule as drafted at this time. In addition, the specifications for summer flounder are intimately linked to the specifications for the scup and black sea bass fisheries, which were not part of the litigation. All of these specifications must be in place immediately in order to manage effectively the recreational fishery, to monitor the state-by-state commercial quotas, and to restrict landings by Federal permit holders upon attainment of those quotas—measures necessary to control the overall mortality on the summer flounder stock.

NMFS considers it a matter of the highest urgency to address the remand of the Court and will work with its

partners in the Council and the Commission. NMFS intends to revise the 2000 summer flounder quota by August 1, 2000, to a level with at least a 50-percent chance of not exceeding the F target. State fisheries agencies and fishery participants are hereby notified that the specifications for the 2000 commercial and recreational summer flounder fisheries will be revised accordingly. Participants are also reminded that any quota overages in the 2000 commercial summer flounder fishery will be deducted from 2001 quotas, as provided under the FMP.

Summer Flounder

The FMP for summer flounder specifies a target F for 2000 of the level of fishing that produces maximum yield per recruit (F_{MAX}). Best available data indicate that F_{MAX} is currently equal to 0.26. The total allowable landings (TAL) are allocated to the commercial (60 percent) and the recreational (40 percent) sectors in the proportion required by the FMP. The commercial sector's quota is allocated to the coastal states based on percentage shares specified in the FMP, and those allocations are detailed in this document.

A summer flounder stock assessment was completed by the Northeast Fisheries Science Center's (NEFSC) Southern Demersal Working Group in the Spring of 1999 and reviewed by the Council's Scientific and Statistical Committee in July 1999. This assessment is summarized in the EA/RIR/IRFA. The assessment was the basis of the Summer Flounder Monitoring Committee's (Monitoring Committee) recommendation of a TAL of 16.815 million lb (7.627 million kg). The Council and Commission (hereinafter, referred to as ''the Council'') reviewed this recommendation and did not adopt it. Instead, the Council recommended, and NMFS proposed, a 2000 TAL level of 18.518 million lb (8.4 million kg). Based on stochastic projection results, this TAL has a 25-percent probability of achieving (*i.e.,* not exceeding) the target F of 0.26 in 2000. NMFS notes that the Commission has measures in place to decrease discards of sublegal fish in the commercial fishery and reduce regulatory discards that occur as the result of landings limits in individual states. Specifically, the Commission has measures in place whereby 15 percent of each state's quota would be voluntarily set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has closed. The intent of this voluntary incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery has closed, while trying to ensure that the state's overall quota is not exceeded. NMFS anticipates that these measures will improve the probability of not exceeding the target. Thus, this rule will implement the following summer flounder measures for 2000: (1) A TAL of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.039 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg).

The preliminary final commercial quotas by state for 2000 are presented in Table 1; the total quotas are divided into the recommended allocation between directed and incidental catch fisheries for purposes of illustration. These preliminary quotas are subject to downward adjustment dependant upon overages of a state's 1999 quota.

TABLE 1.—PRELIMINARY FINAL 2000 SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Directed		Recommended 15 percent as incidental catch		Total	
		Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
Maine	0.04756	4,492	2,037	793	360	5,284	2,397
New Hampshire	0.00046	43	20	8	3	51	23
Massachusetts	6.82046	644,159	292,186	113,675	51,562	757,834	343,748
Rhode Island	15.68298	1,481,181	671,852	261,385	118,562	1,742,566	79,041
Connecticut	2.25708	213,170	96,692	37,618	17,063	250,788	113,756
New York	7.64699	722,221	327,594	127,451	57,811	849,672	385,405
New Jersey	16.72499	1,579,594	716,492	278,752	126,440	1,858,346	842,931
Delaware	0.01779	1,680	762	297	134	1,977	897
Maryland	2.03910	192,583	87,354	33,985	15,514	226,568	102,770
Virginia	21.31676	2,013,264	913,201	355,282	161,153	2,368,546	1,074,354
North Carolina	27.44584	2,592,126	1,175,768	457,434	207,489	3,049,560	1,383,257
Total	100.00000	9,444,512	4,283,959	1,666,679	755,993	11,111,192	5,039,951

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. This document contains: (1) Final specifications and (2) associated preliminary adjustments to each state's 2000 quotas as a result of known 1999 overages. The adjustment in this document is preliminary because it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers. This document utilizes preliminary 1999 landings data that have been provided to NMFS through December 31, 1999.

Based on dealer reports and other available information, NMFS has determined that the States of Maine, Massachusetts, New Jersey, Delaware, and Virginia exceeded their 1999 quotas. Thus far, the remaining States of New Hampshire, Rhode Island, Connecticut, New York, Maryland, and North Carolina are not known to have exceeded their 1999 quotas. The preliminary 1999 landings and resulting overages for all states are given in Table 2. The resulting adjusted 2000 commercial quota for each state is given in Table 3. In Table 4, the adjustment has been made to illustrate the voluntary incidental catch component of the commercial quota at 15 percent of the total, as recommended.

TABLE 2.—SUMMER FLOUNDER PRELIMINARY 1999 LANDINGS BY STATE

State	1999 Quota [1]		Preliminary 1999 landings		1999 Overage	
	Lb	Kg [2]	Lb	Kg [2]	Lb	Kg [2]
Maine	4,450	2,018	5,778	2,621	1,328	602
New Hampshire	51	23	0	0	.....	.....
Massachusetts	757,842	343,751	804,964	365,126	47,122	21,374
Rhode Island	1,742,583	790,422	1,636,528	742,317	.....	.....
Connecticut	238,516	108,189	232,047	105,255	.....	.....
New York [3]	860,006	390,099	793,287	359,829	.....	.....
New Jersey	1,853,926	840,927	1,897,952	860,897	44,026	19,970
Delaware	[4] (25,739)	(11,675)	7,976	3,618	(33,715)	(15,293)
Maryland	202,354	91,786	198,866	90,204	.....	.....
Virginia	2,120,696	961,932	2,130,553	966,403	9,857	4,471
North Carolina [3]	2,974,589	1,349,274	2,800,749	1,270,398	.....	.....
Total [5]	10,755,013	4,866,746	10,508,700	4,766,666	.....	.....

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596), except as noted.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[3] Reflects quota transfer (64 FR 71687, December 22, 1999).
[4] Parentheses indicate a negative number.
[5] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 3.—SUMMER FLOUNDER FINAL ADJUSTED QUOTAS

State	2000 Initial quota		2000 Adjusted quota	
	Lb	Kg [1]	Lb	Kg [1]
Maine	5,284	2,397	3,956	1,794
New Hampshire	51	23	51	23
Massachusetts	757,834	343,748	710,712	322,374
Rhode Island	1,742,566	790,041	1,742,566	790,041
Connecticut	250,788	113,756	250,788	113,756
New York	849,672	385,405	849,672	385,405
New Jersey	1,858,346	842,931	1,814,320	822,962
Delaware	1,977	897	[2] (31,738)	(14,396)
Maryland	226,568	102,770	226,568	102,770
Virginia	2,368,546	1,074,354	2,358,689	1,069,883
North Carolina	3,049,560	1,383,257	3,049,560	1,383,257
Total [3]	11,109,214	5,039,055	11,006,882	4,992,638

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

TABLE 4.—FINAL SUMMER FLOUNDER 2000 STATE COMMERCIAL QUOTAS AND RECOMMENDED INCIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Recommended 15 percent as incidental catch		Total	
		Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
Maine	0.04756	3,363	1,525	593	269	3,956	1,794
New Hampshire	0.00046	43	19	8	4	51	23
Massachusetts	6.82046	604,105	274,017	106,607	48,356	710,712	322,374
Rhode Island	15.68298	1,481,181	671,852	261,385	118,562	1,742,566	790,041
Connecticut	2.25708	213,170	96,692	37,618	17,063	250,788	113,756
New York	7.64699	722,221	327,594	127,451	57,811	849,672	385,405
New Jersey	16.72499	1,542,172	699,517	272,148	123,444	1,814,320	822,962
Delaware [2]	0.01779	0	0	00	.....	[2] (31,738)	(14,396)
Maryland	2.03910	192,583	87,354	33,985	15,415	226,568	102,770
Virginia	21.31676	2,004,886	909,401	353,803	160,482	2,358,689	1,069,883
North Carolina	27.44584	2,592,126	1,175,769	457,434	207,489	3,049,560	1,383,257
Total [3]	100.00000	9,355,850	4,243,742	1,651,032	748,896	11,006,882	4,992,638

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.
[2] A state with a negative number has an allocation of zero (0).
[3] Total includes recommended directed and incidental catch allocations as calculated from the total, and may not add.

Delaware Closure

In 1999, NMFS prohibited Federal permit holders from landing summer flounder in the State of Delaware in the light of deductions from the 1999 quota for overages in 1998 (64 FR 5196, February 3, 1999). As a result of those deductions and further quota reductions published in the **Federal Register** on August 26, 1999 (64 FR 46596), the 1999 quota allocation to the State of Delaware was −25,739 lb (−11,675 kg). An additional 7,976 lb (3,618 kg) of summer flounder were landed in Delaware in 1999. The 2000 quota for Delaware is not sufficient to offset this negative 2000 allocation and the additional landings in 1999. Consequently, Delaware has no commercial quota available for 2000. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective 0001 hours, May 24, 2000, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the remainder of the 2000 calendar year, or until additional quota becomes available through a transfer. If additional landings were to be reported for 1999, the commercial quota for the State of Delaware will be re-adjusted pursuant to § 648.100(d)(2).

Scup

The FMP established a target exploitation rate for scup in 2000 of 33 percent. The total allowable catch (TAC) associated with that rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Discard estimates are deducted from both TACs to establish TALs for both sectors. The commercial TAL is allocated to three different periods.

Scup was most recently assessed at the 27th Northeast Regional Stock Assessment Workshop in June 1998 (SAW 27). This assessment indicates that scup are overexploited and at a record low biomass level. SAW 27 concluded that spawning stock biomass is less than one-tenth of the biomass threshold—the maximum NEFSC indices of spawning stock biomass observed, or 2.77 kg/tow during 1977–1979. The assessment is summarized in the EA/RIR/IRFA.

NMFS disapproved both the rebuilding schedule and the bycatch provision for scup in Amendment 12 to the FMP. Despite that, for the reasons explained in the proposed rule, these final specifications for fishing year 2000 are based on the current exploitation rate associated with the overfishing definition, pending submission and approval of a rebuilding schedule that complies with the Magnuson-Stevens Act. The disapproval of the bycatch provision is discussed in ''Gear Restricted Areas.'' Failure to take any action at all pending the submission of the revised rebuilding schedule could imperil the stock.

The Monitoring Committee reviewed available data and assumed the 1999 exploitation target of 47 percent would be achieved. The Monitoring Committee recommended that the TAC be reduced in proportion to the reduction in exploitation rates from 1999 to 2000, *i.e.,* a 30-percent reduction. As such, the Monitoring Committee recommended a TAC for 2000 of 4.15 million lb (1.88 million kg) resulting in a 3.243 million-lb (1.47 million-kg) commercial TAC, and a 0.915 million-lb (0.415 million-kg) recreational TAC.

The Monitoring Committee also noted the need to reduce discards in the commercial fishery. Specifically, SAW 27 noted that F should be reduced ''substantially and immediately'' and that, while estimates are uncertain, most mortality in recent years was ''clearly attributable to discards, particularly when incoming recruitment is strong.'' The report noted that reductions ''in discards from small-mesh fisheries'' would be particularly effective for this stock. Thus, the Monitoring Committee recommended that the Council implement regulations to close areas to fishing by trawl gear with codend mesh sizes less than 4.5 inches (11.43 cm) to reduce discards of scup.

In preparing data for the Monitoring Committee deliberations, Council staff cited data indicating that, based on the average biomass estimates for 1998 and 1999, the 1999 exploitation rate could be well below its target of 47 percent. Specifically, the staff felt that it was possible that exploitation in 1999 could be as low as 30 percent, provided certain assumptions were met regarding biomass estimates. A 30-percent exploitation rate is equal to the target in 2000. Thus, the staff recommended maintaining the TAC as the status quo level.

The Council reviewed the recommendations and adopted its staff's recommendation, a TAC of 5.922 million lb (2.686 million kg) for 2000. Discard estimates for the commercial and recreational sectors are subtracted from the commercial (4,619,160 lb (2,095,215 kg)) and recreational (1,302,840 lb (590,958 kg)) TACs, respectively, to derive the commercial quota and the recreational harvest limit for the year. Assuming the same proportion of discards to catch in 2000 as 1997 (45.1 percent), the commercial discards would be 2.085 million lb (0.946 million kg), and the quota would be 2.534 million lb (1.149 million kg). Based on the proportion of recreational discards to catch in 1997 (4.96 percent), the recreational discards would be 0.065 million lb (0.029 million kg) and the harvest limit would be 1.238 million lb (0.562 million kg). The commercial allocation is shown in Table 5. As with summer flounder, these allocations are preliminary and are subject to a downward adjustment for any overages in a period's harvest in 1999. Preliminary data indicate that the Winter I and Summer period allocations have been exceeded in 1999, which requires a corresponding reduction in those periods in 2000. The resulting adjusted 2000 commercial quota for each period is given in Table 7.

TABLE 5.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC [1]	Discards [2]	Quota Allocation		Landing limits	
				Lb	Kg [3]	Lb	Kg
Winter I	45.11	2,083,703	940,543	1,143,160	518,529	[4]10,000	4,536
	.....	(945,168)	(426,630)	.....	.....	.....	.....
Summer	38.95	1,799,163	812,108	987,055	447,721	*n/a	.....
	.....	(816,100)	(368,372)	.....	.....	.....	.....
Winter II	15.94	736,294	332,349	403,945	183,226	4,000	1,814

TABLE 5.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA—Continued

Period	Percent	TAC [1]	Discards [2]	Quota Allocation		Landing limits	
				Lb	Kg [3]	Lb	Kg
	.....	(333,983)	(150,754)	.....	.....	.....	.....
Total[5]	100.00	4,619,160	2,085,000	2,534,160	1,149,476	.....	.....
	.....	(2,095,215)	(945,740)	.....	.....	.....	.....

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Kilograms are as converted from pounds and may not add to converted total due to rounding.
[4] The Winter I landing limit will drop to 1,000 pounds (454 kg) upon attainment of 85 percent of the seasonal allocation.
[5] Totals subjects to rounding error.
n/a—Not applicable.

TABLE 6.—SCUP PRELIMINARY 1999 LANDINGS BY PERIOD

Period	1999 Quota		1999 Landings		1999 Overages	
	Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
Winter I	1,143,160	518,529	1,249,234	566,643	106,174	48,114
Summer	987,055	447,721	1,288,482	584,446	301,427	136,725
Winter II	403,945	183,226	700,907	317,926	296,962	134,700
Total	2,534,160	1,149,476	3,238,623	1,469,015	.....	.....

[1] Kilograms are as converted from pounds and may not add to converted total due to rounding.

TABLE 7.—SCUP FINAL ADJUSTED QUOTAS

Period	2000 Initial quota		2000 Adjusted quota[1]	
	Lb	Kg [l]	Lb	Kg [2]
Winter I	1,143,160	518,529	1,037,986	470,369
Summer	987,055	447,721	685,628	310,996
Winter II	403,945	183,226	106,983	48,527
Total	2,534,160	1,149,476	1,830,597	830,345

[1] Trip limits specified in Table 5 are unchanged.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

To achieve the commercial quotas, the Council recommended a landing limit of 10,000 lb (4,536 kg), with a reduction to 1,000 lb (454 kg) when 85 percent of the quota allocation is harvested for Winter I (January-April). A 4,000-lb (1,814-kg) landing limit will be in place for the entire Winter II (November-December) period.

Gear Restricted Areas (GRAs)

The Council noted NMFS's disapproval of the scup bycatch provision and rebuilding schedule in Amendment 12 to the FMP and heeded the advice of the Monitoring Committee and SAW 27 that scup discards must be decreased. To reduce discards of small scup, the Council voted to recommend seasonal GRAs in which commercial vessels would be prohibited from fishing with midwater trawl or other trawl gear with codend nets of mesh size less than 4.5 inches (11.3 cm), unless they were participating in an exempted fishery (identified by the Council to have less than a 10-percent bycatch of scup). The Council proposed GRAs that were identified by an ad hoc advisory panel consisting of Council and Commission members, industry advisors, and the public. The areas comprise a series of small restricted areas, each approximately 2-weeks in duration, within Northeast statistical areas 537, 539, 613, 616, and 622.

NMFS believes that the adoption of GRAs is a critical measure to ensure the attainment of the target exploitation rate and to rehabilitate the deficiencies in the FMP with respect to bycatch provisions as noted in the disapproval of Amendment 12. For the reasons noted in the proposed rule, NMFS did not support the areas and times identified in the Council's alternative. Instead, NMFS proposed an alternative analyzed by the Council that would have established larger GRAs that would remain closed to small-mesh fisheries for longer periods of time (see Alternative 6, as described in the EA/RIR/IRFA). This action would have established two GRAs, a Southern and a Northern GRA. The Southern GRA, defined as Federal waters off New Jersey and Delaware, would have restricted fishing with small mesh from January 1 through April 30. The Northern Gear Restricted Area, defined as Federal waters off Massachusetts, Rhode Island, and New York, would have restricted fishing with small mesh from November 1 through December 31. In light of public comments received on the GRAs, the Southern area has been modified in this final rule. The area has been reduced by moving the Eastern (seaward) boundary inshore to approximate the 100-fathom line. The modified area better incorporates areas in which scup are generally found (depths of 40–100 fathoms), as noted in the FMP's Essential Fish Habitat Source Document (NOAA Technical Memorandum. In press, September, 1999). Specific public comments related to these, and other, measures, are responded to in the ''Comments and

Responses'' section of this final rule. Both of these areas encompass the areas proposed by the ad hoc advisory panel.

During the time periods implementing both GRAs, midwater trawl and other trawl gear fishing vessels with nets on board that have a mesh size less than a 4.5-inch (11.3-cm) diamond mesh in the codend would be prohibited from fishing for, or possessing black sea bass, *Loligo* squid, mackerel, and silver hake when in the Southern GRA. The fishery for Atlantic herring has been determined to be exempt from both restricted areas. Copies of a chart depicting these areas are available in the EA/RIR/IRFA and from the Regional Administrator upon request (see **ADDRESSES**).

The modification of the area will not substantially alter the impact on scup harvest or discards, because scup are not found outside the 100-fathom (183-m) curve to any great extent. However, this modification will substantially reduce the impact on other small-mesh fisheries that are prosecuted outside the 100-fathom (183-m) curve. Analyses indicate that this revision will reduce economic losses in exvessel revenue by an estimated 20–33 percent from the original proposed alternative. This change responds to public comments expressing concern about the size of the proposed GRA, and also incorporates the points on enforceability raised by the U.S. Coast Guard (USCG). The areas will be in place until revised by the Council.

Lastly, vessels with exempted experimental fishing permits will be allowed to conduct experiments with small-mesh gear in the regulated areas. The Council is working with industry members to identify gear modifications that would reduce the catch of scup in small-mesh fisheries for squid. Once this experimental work is completed and an effective gear design is identified, NMFS may authorize its use in the regulated mesh areas, provided other experimental fishery requirements are met.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 2000. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) fisheries. The commercial quota is specified on a coastwide basis, by quarter. The most recent assessment on black sea bass, SAW 27, indicates that black sea bass are over-exploited and at a low biomass level. Although data limitations make this estimate uncertain, F for 1998 may be equal to, or even less than, the target (48-percent exploitation). The NEFSC Spring Survey results for 1998 and 1999 indicate that there may have been a significant increase in black sea bass biomass in 1999 (although the 1999 index is high mainly because of a single tow). This assessment is summarized in the EA/RIR/FRFA.

To achieve the goals for 2000, this final rule implements a black sea bass TAL equal to the 1999 level and reduces the quarterly trip limits as recommended by the Council. The commercial quota and corresponding trip limits are shown in Table 8. The Council had recommended that trip limits be reduced in an attempt to prevent overages in each of the quarters from reoccurring. Preliminary data indicate overages occurred in Quarters 2, 3, and 4 (See, Table 9), which requires a corresponding reduction in those quarters in 2000. The resulting adjusted 2000 commercial quota for each quarter is given in Table 10. Status quo is retained on other related management measures, such as the minimum fish size and possession limit.

TABLE 8.—2000 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY TRIP LIMITS

Quarter	Percent	Lb	Kg [1]	Trip limits	
				Lb	Kg [1]
1 (Jan–Mar)	38.64	1,168,760	530,141	9,000	4,082
2 (Apr–Jun)	29.26	885,040	401,447	3,000	1,361
3 (Jul–Sep)	12.33	372,951	169,168	2,000	907
4 (Oct–Dec)	19.77	597,991	271,244	3,000	1,361
Total	100.00	3,024,742	1,372,000	.....	.....

[1] Subject to rounding error.

TABLE 9.—BLACK SEA BASS PRELIMINARY 1999 LANDINGS BY QUARTER

Quarter	1999 quota [1]		Preliminary 1999 landings		1999 overage	
	Lb	Kg [2]	Lb	Kg [1]	Lb	Kg [2]
1	1,168,860	530,186	708,235	321,250	.....	.....
2	885,115	401,481	1,031,318	467,798	146,203	66,317
3	372,983	169,182	472,779	214,449	99,796	45,267
4	598,043	271,268	655,864	297,495	57,821	26,227
Total [3]	3,025,000	1,372,117	2,868,196	1,300,992	.....	.....

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596).
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 10.—BLACK SEA BASS FINAL ADJUSTED QUOTAS

[Trip limits specified in Table 8 are not changed.]

Quarter	2000 Initial quota		2000 adjusted quota	
	Lb	Kg [1]	Lb	Kg [1]
1	1,168,760	530,141	1,168,760	530,141
2	885,040	401,447	738,837	335,131
3	372,951	169,168	273,155	123,901
4	597,991	271,244	540,170	245,017
Total [3]	3,024,742	1,372,000	2,720,922	1,234,189

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Changes From the Proposed Rule

In an Opinion and Order, dated June 24, 1998, the U.S. District Court for the District of Massachusetts voided the portion of the scup regulations found at §§ 648.120 and 648.121 implementing a state-by-state allocation of the commercial scup fishing quota during the summer period. NMFS is prohibited from enforcing the voided portion of the regulations, including the calculation of overages. While NMFS has complied with the order and has not enforced the regulations, the codified language has remained intact. To make clear that NMFS has, in fact, complied with the order, NMFS by this final rule suspends regulations relative to the state-by-state management of the scup summer quota period. As a result, language in §§ 648.120 and 648.121 has been removed. The summer period will continue to be managed under a coastwide quota until such time that new regulations are promulgated that are consistent with the order.

In § 648.122(a)(1), the parenthetical phrase regarding availability of a map of the Southern GRA is corrected to indicate that a chart of the area is available. In that same section, a typographical error indicating the latitude of point SGA2 is corrected, and the points describing the eastern boundary of the area are revised to reflect the modification as previously described in the preamble.

In § 648.122(b)(1), the parenthetical phrase regarding availability of a map of the Northern GRA is corrected to indicate that a chart of the area is available. In that same section, points NGA2 through NGA6 are revised to reflect that Federal permit holders are bound by the northern GRA surrounding Block Island, RI, up to and including state waters. Subsequent points are renumbered, the northernmost latitude of the GRA is revised to read 41°10′ so that the northern boundary of the GRA lies south of Nantucket Island, MA.

In § 648.122(b)(2), Atlantic herring is removed from the list of non-exempt species. It was incorrectly placed on the list in the proposed rule. Historical sea sample data from the EA indicate that the herring fishery qualifies for exempted status under both the GRAs.

In § 648.122, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added. The new paragraph includes the process by which additional fisheries could be made exempt from the GRAs, which was inadvertently omitted from the proposed rule.

Comments and Responses

Twelve comments were received on the proposed specifications from the public during the comment period that ended on February 28, 2000. Specific comments related to the proposed annual specifications and the EA/RIR/IRFA for the 2000 summer flounder, scup, and black sea bass fisheries are discussed and responded to as follows.

Scup GRAs (GRAs)

Comment 1: Three commenters do not support the scup GRAs because of the negative impact the areas would have on industry, the contention that the underlying data are outdated, and the belief that current data indicate that there is no need to reduce incidental catch of scup in small-mesh fisheries. Two of these commenters feel NMFS ''callously rejected'' and ''discarded'' the advice of industry. One questions the rationale for the areas.

Response 1: NMFS values the hard work of industry in developing advice for the Council's recommendation. The advice of the ad hoc working group that developed those areas is clearly reflected in the adopted GRAs, particularly where industry members noted the prevalence of Loligo and scup interactions in Northeast Statistical area 537 (south of Nantucket and Martha's Vineyard Islands, MA). In addition, NMFS acknowledges the impacts that these areas may have on industry and has taken action to mitigate these impacts by modifying the southern GRA to resemble more closely the working group's recommendations. To the extent practicable and consistent with the goals of the GRAs, the revisions modify the seaward border of the Southern GRA to better approximate the 100-fathom (183-m) line. These modifications should minimize impacts on industry by affording industry more areas in which to conduct fisheries. The northern GRA has also been revised slightly to increase enforceability as discussed in the preamble. NMFS anticipates that these revisions will better comply with the guidance of national standard 9, as well as incorporate important enforcement concerns. In light of the disapproval of the scup rebuilding and bycatch provisions in Amendment 12 to the FMP, it is incumbent upon NMFS to meet its statutory requirements to reduce discards and to rebuild the fishery. NMFS cannot ignore its obligations to both the FMP and the Magnuson-Stevens Act.

In reviewing the latest scientific information, the Monitoring Committee recommended that the Council implement a scup discard rate of 90 percent in 2000, unless some other measures, such as time and area closures for the scup fishery, were implemented. The discard rate would be applied to the commercial TAC in setting the TAL (that is, 90 percent of the commercial TAC would be allocated to discards, and the remaining 10 percent would be available as landings). The Council rejected the 90-percent estimate and passed a motion to accept the recommendation as GRAs beginning in the year 2000, with the inclusion of the development of an exempted fishery program to allow fisheries to continue that do not exceed a 10-percent scup bycatch. Adoption of these GRAs allowed the Council to estimate discards at 45 percent. In developing alternatives to the recommendation, the Council analyzed the best available data, 1997 and 1998 vessel trip report (VTR) data

and January 1989-April 1999 NMFS sea sample data. The limitations of these data were thoroughly described in the EA. If additional data are made available that would revise the need for, or the specific boundaries of, the GRAs (either spatially or temporally) the Council may implement such changes by way of the annual specifications or framework adjustment processes.

Comment 2: Two commenters, although not specifically supporting or opposing the GRAs, questioned the data used, specifically the data that did not exempt the *Loligo* fishery. One commenter stated that recent data show there is no scup discard problem in the *Loligo* fishery, and another commenter wished to have these data incorporated into the development of the areas.

Response 2: The *Loligo* fishery has long been identified as a primary source of scup discards. However, the magnitude of the discards is unknown. Assuming that the areas and times in which scup and *Loligo* are caught together are probably also the areas and times in which scup discards occur, the Council examined 1997 VTR data to determine possible times and locations for scup/*Loligo* overlap. The Council further analyzed NMFS sea sample data from January 1989 through April 1999 to assess the level of scup discarding in other small-mesh fisheries. These best available data indicate that the scup discards in the November through December *Loligo* fishery were 48 percent, by weight, of total catch, and in the January through April period were 78 percent. Consequently, the *Loligo* fishery does not qualify for exempted status in these areas and time periods. An exemption for *Loligo* may be added in the future if sufficient data or new information become available to result in an estimation that the amount of scup bycatch is less than 10 percent, by weight, of the total catch, and if the Regional Administrator, after consultation with the Council, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. NMFS recommends that the commenters work with the Council to exempt this fishery through the existing mechanisms in the regulations.

Comment 3: Two commenters support the GRAs, believing that the areas will greatly reduce scup discards, thereby reducing scup mortality. One of these commenters did not support any modification to the areas.

Response 3: NMFS agrees that these areas will greatly reduce scup discards. The need for measures in the FMP to reduce discards in the scup fishery was stressed in the disapproval of the bycatch provision in Amendment 12 to the FMP. Current measures in the FMP do not adequately reduce bycatch (including discards, as stated in the Magnuson-Stevens Act) or minimize bycatch mortality. Consequently, measures such as these GRAs will begin to rehabilitate the deficiencies in the FMP and will encourage the Council to address this issue in a more comprehensive way, e.g., either through closed/restricted areas or gear modifications. The rationale for modifications to the GRAs described in the proposed rule is further explained in the response to Comment 1.

Comment 4: One commenter questioned the process and use of the proposed rule and specifications as a vehicle for implementation of such measures as GRAs.

Response 4: NMFS is confident that these specifications are an appropriate vehicle to implement these measures. The regulations implementing the FMP contemplates a broad range of action for annual specifications. The regulations at § 648.120(b) specifically provide that the Council may recommend the following measures for the commercial fishery to assure that the specified exploitation rate will not be exceeded: (1) A commercial quota allocated into three periods, (2) landing limits for the Winter I and Winter II periods, (3) the percent of landings attained at which the landing limit for the Winter I period will be reduced, (4) commercial minimum fish size, (5) minimum mesh size, (6) restrictions on gear, and (7) season and area closures in the commercial fishery. The regulations also contemplate a range of opportunities to receive public input on the proposed measures.

Comment 5: Two commenters had questions related to the 10-percent threshold used to exempt fisheries from the GRA regulations. Specifically, the commenters wanted to know how the threshold is determined (i.e., how a fishery is to be exempted, by one trip or many), why a 5-percent threshold was not used as in the case in the Northeast Multispecies FMP, and what would be the observer coverage. An additional commenter supported the 10 percent exemption threshold and wanted to know why the threshold was not proposed by NMFS.

Response 5: The threshold to exempt fisheries was determined by a Council motion to include a process for exempting fisheries within the GRAs. The exempted fishery program will allow fisheries to continue that do not exceed a 10 percent, by weight, of total catch as long as such exemptions will not jeopardize fishing mortality objectives. An exemption based on a 10-percent bycatch criteria was selected because that percentage threshold is the one used in the summer flounder small-mesh exemption program. This precedent, then, exists in the FMP for the establishment of that percentage for exempting a fishery. The exemption is based on the all available data. No observer coverage is required, although it is strongly encouraged and supported by NMFS. This exemption program was included in the proposed rule. However, the process by which the Council could add or eliminate exemptions was inadvertently omitted from the proposed regulatory language. This oversight is corrected in this final rule.

Comment 6: Three commenters noted that, based on data presented in the EA/RIR/IRFA, the Atlantic herring fishery should be exempt from the GRAs for both periods and in both areas.

Response 6: NMFS agrees. NMFS proposed to exempt Atlantic herring from the Southern GRA. An error in the interpretation of the data presented in the EA/RIR/IRFA resulted in the herring fishery being added to the list of non-exempt species for the Northern GRA. Based on public comments and a reexamination of sea sample data, NMFS notes that the herring fishery does qualify for an exemption under both GRAs. The regulations in § 648.122(b)(2) have been revised to account for that correction.

Comment 7: Two commenters supported exempting Atlantic mackerel from the GRAs as data become available.

Response 7: NMFS agrees that, if data become available to support such an exemption, Atlantic mackerel could be listed as exempt from these GRAs following the procedures outlined in the regulations.

Comment 8: The Council recommended that NMFS postpone implementation of any GRAs to work on perfecting the modified areas that the Council included as part of its comment. This comment was supported by one other commenter. However, two other commenters did not support the modified areas and instead indicated that such a change should be considered under a separate rulemaking.

Response 8: NMFS feels that implementation of the GRAs is consistent with the mandate of national standard 9 to reduce discards. In addition, since the Council's proposal is not perfected and does not have widespread industry support and input, it is better dealt with in a separate rulemaking. NMFS encourages such action. Note that implementation of the

Council's alternative differs from the action taken by NMFS to modify the proposed GRAs in this final rule. This modification represents a revision to the proposed measure based, in part, on public comments. The modified GRAs proposed by the Council represent substantially different areas and times, which require further public examination and analysis. Further, since the GRAs were proposed by the Council as part of the 2000 specifications for scup, and given the conservation imperative to effect needed reductions in scup discard, NMFS feels it would be inappropriate to delay implementation. NMFS notes that the decision to deny a petition for rulemaking to implement measures to reduce scup discard was based on the inclusion of these provisions in the 2000 specifications for summer flounder, scup and black sea bass (65 FR 4546, January 28, 2000).

Comment 9: One commenter questioned why the possession of *Loligo* is prohibited in GRAs, even if harvested with 4.5-inch (11.4-cm) mesh.

Response 9: The regulations prohibit permit holders to fish for, possess, or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the GRAs during the appropriate time periods when in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions. However, a vessel *may* fish for, possess, or land those species in or from the GRAs when in possession of nets that do meet the minimum mesh requirements. These vessels may have nets or nettings on board that do not meet the minimum size, if those nets or netting are stowed in accordance with the regulations. Harvest Levels

Comment 10: One commenter did not support the summer flounder TAL and instead recommended that the Summer Flounder Monitoring Committee's recommendation of 16.815 million lb (7.627 million kg) be implemented. The commenter stated that this lower TAL has a higher probability of achieving the target (50 percent, versus the 25-percent estimate of the adopted TAL) and that NMFS should set a TAL that has ''a 50/50 chance of meeting the target.'' The commenter also believes that the stock rebuilding schedule is inadequate, because the 1999 stock assessment indicates the stock won't rebuild until 2017.

Response 10: NMFS approved the Council recommendation that the 2000 TAL be 18.518 million lb (8.4 million kg). Based on stochastic projection results, this TAL has a 25-percent probability of achieving the target F of 0.26 in 2000 and a 50-percent probability of achieving F = 0.29. These same stochastic projections indicate that the current rebuilding plan is on target, and this rebuilding plan was approved by NMFS under Amendment 12 to the FMP. NMFS also notes that the Commission has recommended that states implement measures to reduce incidental catch and regulatory discards that occur as the result of commercial landings limits in individual states. Specifically, the Commission has instituted voluntary management measures whereby 15 percent of each state's quota would be set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has closed. The intent of this incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery has closed, while trying to ensure that the state's overall quota is not exceeded. It is anticipated that these measures will improve the probability of achieving the target. This measure is also consistent with a state-by-state quota system which allows states the flexibility to manage their individual allocations to best reflect their industry. This allows the states to more tightly control their fishery and prevent overfishing. Consequently, it may be expected that individual states would implement slightly different programs.

The recent assessment for summer flounder notes that ''[b]ecause the effects of density dependence, future environmental conditions, and expansion of stock age structure on growth and recruitment at higher stock sizes are unknown, these projected levels of stock biomass and landings should be considered with caution.'' If recent low levels of recruitment persist, the projections may be optimistic. Conversely, if recruitment is underestimated or improves, the projections may be conservative. These projections are updated with the best scientific information available each time the an assessment is made on the fishery.

In addition, the BMSY target noted is subject to revision based on changes in the input data that change the partial recruitment pattern for the fishery. That is to say, the rebuilding target is BMSY, not necessarily 106,000 mt. Such changes to the partial recruitment would be influenced by changes in future management action, including minimum sizes and seasonal landing patterns in the fishery.

Comment 11: Two commenters did not support the scup harvest levels. One supported a reduction of the discard estimate to eliminate overages and increase the commercial quota, and the other expressed concern that the proposed TAC is too high in light of the record low biomass level.

Response 11: In making its recommendation to NMFS, the Council considered a recommendation by the Monitoring Committee to use a 90-percent discard-to-landings ratio in establishing the TAL. The Committee noted that the discard-to-landings ratio had doubled in recent years (1998 versus 1997), based on the limited data available, including survey, VTR, and sea sampling. Such a recommendation, if adopted, would have, for all intents and purposes, eliminated the commercial fishery for 2000, particularly after deduction for overages in the 1999 quota periods. The Council, however, assumed the same proportion of discards to catch in 2000 as 1997 (45.1 percent), and recommended a lower discard estimate—coupled with the GRAs. Such a measure would achieve the goals of the FMP while maintaining some economic opportunity for the industry participants. NMFS agrees with this approach.

Comment 12: One commenter did not support the black sea bass trip limits, and specifically requested an 11,000-pound (4,990-kg) trip limit in Quarter 1 (Jan–Mar).

Response 12: The reduced trip limits are an attempt to prevent overages in each of the quarters from occurring or reoccurring. These reductions are particularly relevant in light of the fact that deductions are made for 1999 overages in this final rule, thus reducing the overall quota per quarter.

Comment 13: One commenter objected to the late publication date of the proposed rule, saying it rendered portions of the 2000 specifications ''meaningless.'' The commenter questioned whether NMFS provided meaningful opportunity to comment on the proposed regulations, as they would already be ''in effect on the water.''

Response 13: NMFS agrees that the late publication of this final rule is problematic. This delay will prevent several regulatory provisions from being implemented. However, since this is a joint FMP, states have already implemented several provisions of the recommendations under compliance criteria specified in the Commission's FMP. That fact, of course, did not preclude due consideration of public comments on the proposed measures. In fact, several changes have been made in direct response to comments. In addition, since certain provisions of the specifications are regulatory in nature (such as the reduction of future quotas

due to overages), states must implement any changes to the quotas identified in this final rule. States routinely make such changes in response to quota adjustments which, because of the publication delay, are presented in this final rule. In previous years, this adjustment had been published as a separate action. EA/RIR/IRFA

Comment 14: One commenter felt that the EA for summer flounder falls short of National Environmental Policy Act (NEPA) requirements in that it does not provide adequate discussion of impacts, there are no long-term or cumulative impacts (of continued summer flounder overfishing) examined, and no explanation of why any of the alternatives were accepted or rejected.

Response 14: NMFS determined that the EA fully and adequately analyzes impacts of the alternatives considered. Still, NMFS realizes that there may be cumulative impacts as a result of annual specifications. Although overall impacts of the management programs were examined in detail as part of the environmental impact statements (EISs) prepared for each of the three fisheries (Amendment 2 for summer flounder (1992), Amendment 8 for scup (1996), and Amendment 9 for black sea bass (1997)), NMFS revised the EA for the 2000 specifications to more fully discuss potential cumulative impacts of the annual specifications.

Comment 15: One commenter felt that the EA/RIR/IRFA is ''flawed'' due to the failure to consider the full range of economic benefits and costs associated with the summer flounder quota specifications. The commenter stated that the ''errors in the analysis * * * incorrectly bias the analysis in favor of higher quotas at the expense of rebuilding * * *''

Response 15: NMFS disagrees. The economic analysis conducted for this action responded to the requirements of the National Environmental Policy Act, E.O. 12866, and the Regulatory Flexibility Act. The economic analysis performed used the best scientific information available in describing the expected economic impacts for each quota specification option as required by law.

Comment 16: One commenter felt that the IRFA fails to consider economic benefits to scup fishermen from reduced discards in small-mesh fisheries, and resultant stock recovery; and does not analyze costs saved for trips not taken in the GRAs.

Response 16: NMFS feels that the IRFA addresses adequately the economic impacts of the scup specifications. The economic benefits of reduced discards and resultant stock recovery are addressed in the EIS for Amendment 8 to the FMP, which implemented management measures for scup. As these specifications are not expected to result in the immediate recovery of the stock, it would be inappropriate for this final rule to analyze such impacts. Ultimately, a recovered stock would have obvious benefits to industry in a more balanced age structure of the scup stock, increased spawning stock, and increased yield as fish are allowed to grow larger before harvest.

Comment 17: One commenter felt that the use of a relative performance index (RPI) misleads one to believe that the proposed GRA alternative is least efficient. The commenter felt that the analysis should instead take the difference between the benefits and costs (rather than divide, as the RPI did) to determine net benefits. Under that calculation, the proposed alternative would have the greatest net benefits.

Response 17: The RPI provides a relative comparison among the various proposed alternatives and is used as a mechanism to rank them. The commenter appears to have incorrectly characterized the RPI as a benefit/cost ratio. The index was never intended to be, nor was it purported to be, a measure of benefits and costs. The RPI simply provides a ranking mechanism to show how the various proposed alternatives compare in terms of percent reduction in scup discards to reduction in gross revenues.

Comment 18: One commenter stated that the revenue reductions in the scup GRA analysis failed to account for the proposed significant reductions in the 2000 *Loligo* quota. The commenter felt that reductions in revenues in the *Loligo* fishery, therefore, were not solely associated with the GRAs.

Response 18: NMFS notes that impacts associated with the *Loligo* reductions were fully and adequately considered in the specifications for that fishery. An analysis of that action (See proposed initial specifications for the Atlantic mackerel, squid and butterfish fisheries, 65 FR 431, January 5, 2000) indicated that the *Loligo* quota represents an 18-percent reduction in landings compared to the average last 3 (1996–98) years, and may result in a 5- to 10-percent revenue reduction (all species combined) for 121 of 443 vessels that reported landing Loligo in 1997. The remaining vessels (322) are expected to experience a reduction of less than 5 percent. Since trimester management of the *Loligo* specifications is newly implemented in 2000, the EA/RIR/IRFA for scup, then, examines to the extent practicable, estimated impacts of the GRAs based on historical performance of the *Loligo* fleet, and assumes that the *Loligo* quota would not have been fully harvested and would continue unrestrained by other actions. Such assumptions in the document are credible. If the *Loligo* quota were harvested, of course, then actual impacts may vary significantly from the estimated—either towards greater impacts, or lesser. A closure may result in those vessels ceasing fishing, eliminating impacts of the GRAs on their activity.

Comment 19: Three commenters noted that, based on data presented in the EA/RIR/IRFA, the Atlantic herring fishery should be exempt from the GRAs for both periods, and in both areas.

Response 19: This comment was addressed in the response to Comment 6.

Enforceability

Comment 20: The USCG submitted a comment expressing its preference for closed areas with no exemptions, as opposed to GRAs, which require boardings for compliance checks. The USCG feels GRAs are ''an enforcement compromise.'' The USCG agreed with NMFS's contention that the Council's preferred areas were too small and too short in duration, but notes that the NMFS proposed areas were large and equally burdensome to enforce, since they allow entry by exempted vessels. The USCG recommended that, for law enforcement purposes only, areas be restricted for a minimum of 60 days, and be plainly shaped squares or rectangles whose sides conform to a minimum 30 minutes of latitude or longitude on a side. The USCG also supports the national vessel monitoring systems for all vessels within the GRAs to help the USCG locate them to see if they are complying with the regulations.

Response 20: NMFS understands the USCG comments. Partially in response to this comment, these areas have been modified in shape. The areas conform to the USCG request in that they are restricted for a minimum of 60 days and have plainly shaped sides. At its narrowest points, the Southern area is approximately 20 nautical miles wide and the Northern area 15 nautical miles wide. Both of these sections of area are narrower than ideal for enforcement purposes. However, given the expected interaction of scup with small-mesh species (including *Loligo*, Atlantic mackerel, whiting, and black sea bass) in the vicinity of those areas at those times, and given industry testimony to that effect, these areas are, to the extent practicable, the most workable compromise.

Classification

This action is authorized by 50 CFR part 648.

These specifications have been determined to be not significant for purposes of E.O. 12866.

Because §§ 648.120 and 648.121 pertaining to the scup summer period state-by-state quota allocation are contravened by judicial order, providing prior notice and opportunity for public comment on their removal from the regulations would serve no useful purpose and is therefore unnecessary. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, providing a 30-day delay in effective date would be inconsistent with the intent of the judicial order and is unnecessary. The AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period.

This action establishes annual quotas and related management measures for the summer flounder, scup, and black sea bass fisheries which are used to control harvest of these fisheries and to restrict landings when their quotas are harvested. Action to restrict landings must be taken immediately upon attainment of the quota to conserve fishery resources. The State of Delaware's summer flounder allocation has been harvested. It would be contrary to the public interest to provide prior notice to implement these restrictions, since the allocations have already been harvested and the regulations require the publication of this action. Failure to implement this provision would result in overfishing. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, because the remaining quota provisions reduce overfishing of the summer flounder, scup, and black sea bass resources in the remaining states and periods, it would be impracticable and contrary to the public interest to delay implementation of the remaining quota provisions. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for both the quotas and related management measures, including the landings restrictions.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The request for an experimental fishing exemption has been approved by the Office of Management and Budget under Control Number 0648–0309. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, must be sent to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS completed a final regulatory flexibility analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a) as follows:

Final Regulatory Flexibility Analysis for Summer Flounder, Scup, and Black Sea Bass 2000 Specifications

Need for and Objectives of the Rule

This final rule is necessary to establish annual specifications for the summer flounder, scup, and black sea bass fisheries. The intent of this final rule is to comply with the regulations for summer flounder, scup, and black sea bass that require NMFS to publish specifications for each fishing year to conserve and manage the resources in compliance with the regulations, the fishery management plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act.

Public Comments

There were three (3) public comments submitted in response to the initial regulatory flexibility analysis (IRFA). NMFS responded to these comments in the Comments and Responses section to this final rule. No comments were submitted specifically on the Item of Particular Concern noted in the proposed rule. As a result of these comments, changes were made to the rule regarding the exemption for the herring fishery from requirements of the gear restricted areas (GRAs), the size and location of the GRAs, and methods for exempting species from the GRA restrictions. These changes are noted in the responses to comments as well as in the preamble to this final rule.

Number of Small Entities

In 1998, a total of 1056 permitted vessels landed summer flounder, scup, and/or black sea bass and would be impacted by the quota specifications. Those most likely to be impacted by the GRAs would be those vessels permitted under several different FMPs, including the Northeast Multispecies FMP (whiting), the Atlantic Mackerel, Squid and Butterfish FMP (Loligo squid, Atlantic mackerel), and the Summer Flounder, Scup and Black Sea Bass FMP (black sea bass), and fishing with trawl gear with codend mesh less than 4.5 inches (11.3 cm) in the GRAs. An analysis of these areas indicates that 59 vessels used small mesh gear that would be restricted in the northern GRA. The total prohibited trips were valued at $0.8 million. In the southern GRA, 116 vessel would be impacted by the GRAs. The total value of these restricted trips were valued at $9.7 million. All of these vessels readily fall within the definition of a small business.

Cost of Compliance

No additional costs of compliance including those associated with recordkeeping and reporting would result from the implementation of this final rule.

Minimizing Significant Economic Impact on Small Entities

An analysis of the harvest level alternatives indicated that the levels adopted in this final rule minimized significant economic impacts while achieving the stated objectives of the FMP. No other alternative considered met the objectives while minimizing significant economic impacts on small entities. Although one alternative resulted in less impact on small entities, the harvest level proposed under it was found inconsistent with the requirements to end overfishing and rebuild the stocks. Other alternatives had higher probabilities of achieving the rebuilding goals of the FMP.

A review of the impacts of the proposed GRA alternative, as well as the comments received, indicated that impacts could be minimized while still accomplishing the stated objectives of the measures. Consequently, NMFS modified the proposed GRAs by reducing the size of the Southern GRA. This modification will (1) Provide for increase fishing opportunities for vessels otherwise restricted under the proposed alternative, (2) better accommodate seasonal variations in the migrations of scup, (3) reflect information on areas of noted scup/Loligo interaction, and (4) maintain or increase enforceability. The other significant alternatives to the GRAs were rejected as each did not provide for enforceable conservation benefits.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 18, 2000.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(122) and (a)(123) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, possess or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(a) while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(123) Fish for, possess or land *Loligo* squid, silver hake, black sea bass, or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(b), while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

* * * * *

3. In § 648.120, paragraphs (d)(2), (d)(4) and (d)(6) are revised to read as follows, paragraph (d)(3) is removed and reserved, and paragraphs (d)(7) and (e) are removed.

§ 648.120 Catch quotas and other restrictions.

* * * * *

(d) * * *

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) [Reserved]

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested.

* * * * *

(6) Any overages of the commercial quota landed during the Summer period will be deducted from that period's allocation for the following year. Any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

4. In § 648.121, paragraph (a) is revised to read as follows, and paragraph (b) is removed and reserved.

§ 648.121 Closures.

(a) *Period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the **Federal Register** advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) [Reserved]

5. Section 648.122 is revised to read as follows:

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1	38°00′	74°20′
SGA2	38°40′	74°00′
SGA3	40°00′	72°30′
SGA4	40°00′	71°20′
SGA5	39°10′	72°47′
SGA6	38°00′	73°55′
SGA7	38°00′	74°20′

(2) *Non-exempt species.* Unless otherwise specified in paragraph (c) of this section, the restrictions specified in paragraph (a)(1) of this section apply to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(b) *Northern Gear Restricted Area.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
NGA1	40°00′	72°50′
NGA2	41°10′	71°40′
NGA3	41°10′	70°00′
NGA4	41°00′	70°00′
NGA5	41°00′	70°40′
NGA6	40°00′	71°30′
NGA7	40°00′	72°50′

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (c) of this section, the restrictions specified in paragraph (b)(1) of this section apply to vessels in the Northern Gear Restricted Area that are fishing for, or in possession of, the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in

possession of all other species of fish and shellfish are exempt from these restrictions.

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) *Addition or deletion of exemptions.* (1) An exemption may be added in an existing fishery for which there is sufficient information to ascertain the amount of scup bycatch, if the Regional Administrator, after consultation with the MAFMC, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives for scup, the Regional Administrator may take into consideration factors such as, but not limited to, juvenile mortality. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of scup is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(2) The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup.

(e) *Exempted experimental fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

6. In § 648.123, the first sentence of paragraph (a)(3), paragraph (a)(4), and the first sentence of paragraph (a)(5) are revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net.* * *

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.122 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 4,000 lb or more (1,814 kg or more) of scup and subject to the minimum mesh requirement in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum mesh requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. * * *

* * * * *

[FR Doc. 00–12993 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 65, No. 101
Wednesday, May 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1070]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulation Z, which implements the Truth in Lending Act, to revise the disclosure requirements for credit and charge card solicitations and applications. The annual percentage rate (APR) and other cost information must be provided in direct mail and other applications and solicitations to open card accounts. The amendments are intended to enhance consumers' ability to notice and understand cost information that generally must be provided in the form of a table. The APR disclosed for purchase transactions would be subject to a type size requirement, and the requirement that disclosures be ''clear and conspicuous'' would be more strictly construed. Additional guidance would be given on the requirement that the table be prominently located, and on the level of detail about cost information required or permitted in the table.

DATES: Comments must be received on or before July 18, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1070, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC. 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping.

The Fair Credit and Charge Card Disclosure Act of 1988 (1988 Act) amended TILA to require that the APR and certain other terms (primarily applicable to purchase transactions) be disclosed in certain direct mail and other solicitations and applications to open credit and charge card accounts. The purpose of the 1988 Act was to ensure that consumers receive key cost information about credit and charge cards early enough to have the opportunity to comparison shop for such cards. The 1988 Act generally requires that card application and solicitation disclosures be provided in the form of a table (commonly referred to as the ''Schumer box'' after the law's chief sponsor) with headings for each item of information. The terms required to be in the table include: the name of the method used for calculating finance charges on an outstanding balance, any minimum finance charge per billing cycle, transaction fee, annual fee, grace period, and the APR for purchase transactions. The card issuer also must disclose any cash advance fee, late payment fee, or fee for exceeding a credit limit. These items may be either in the required table or clearly and conspicuously elsewhere. The applicable disclosures must also be provided for charge cards that do not use a periodic rate to compute a finance charge.

As with all TILA disclosures, the table is subject to the ''clear and conspicuous'' standard. Currently, the table meets the ''clear and conspicuous'' standard if the disclosures are in a ''readily understandable form.'' There are no type size requirements associated with this standard. The table is also required to be in a ''prominent location'' on or with the application or solicitation. Under the existing rules, this requirement is met if the table is ''readily noticeable to the consumer.'' The table need not be in any particular location to satisfy the requirement.

Over the years, the pricing of credit card programs has changed, and the cost disclosures accompanying card issuers' solicitations and applications have become more complex. Multiple APRs may apply to a single program. There may be a temporary introductory rate, a fixed or variable rate for all purchases after the introductory period expires, and one or more ''penalty rates'' that apply if, for example, the consumer makes late payments.

As interest rates and other account features have become more complex, and disclosures longer, some card issuers have compensated by using reduced type sizes for the table instead of allocating additional space for the disclosures. In such cases, consumers may have difficulty in using the table to readily identify key costs and terms. In contrast, the promotional materials that accompany the credit card application or solicitation may highlight a low introductory APR in a large, easy to read type size; oftentimes without the expiration date in close proximity. The APR in effect after the introductory rate expires typically is disclosed much less prominently—in a smaller type size—and it may only appear in the disclosure table and not at all in the promotional materials. The table may be in a location that is less likely to capture the consumer's attention, for example, on the reverse side of an application or on the last page of a multi-page solicitation.

Even with the format requirements, there is substantial flexibility in the current regulatory framework. While some card issuers' disclosures are fairly

straightforward, other card issuers have created disclosures that are difficult for consumers to use. Changes to the current regulatory scheme appear necessary to ensure that consumers receive meaningful disclosures on a more consistent basis, for comparison shopping.

The 1988 Act authorizes the Board to require disclosure of additional information, or to modify the disclosures required by the statute if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of the 1988 Act. See 15 U.S.C. 1637(c)(5). This is in addition to the Board's authority under section 105(a) of TILA to prescribe regulations to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. See 15 U.S.C. 1604(a).

II. Summary of Proposed Revisions

The Board is proposing amendments to Regulation Z in order to effectuate the purposes of the 1988 Act and promote more effective disclosure of the costs and terms in credit and charge card applications and solicitations.

Under the proposal, the APR for purchase transactions is subject to a type-size requirement, to highlight this information. It would be in at least 18-point type and would appear under a separate heading from other APRs, such as penalty rates. The requirement that disclosures be ''clear and conspicuous'' would be more strictly construed for purposes of the disclosure table required for credit and charge card applications and solicitations. These disclosures would have to be ''readily noticeable,'' as well as in a ''reasonably understandable form.'' As to type size, disclosures in at least 12-point type would be deemed readily noticeable.

Additional guidance is provided on satisfying the current requirement that the table be prominently located. The Staff Commentary would be revised to provide that the table is sufficiently prominent, for example, if it is on the same page as an application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form.

Guidance also would be issued on the level of detail required or permitted in the table. This is intended to reduce clutter and promote the use of more concise language. For example, the table must include any increased penalty APR that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit exceeding the credit limit. The card issuer must also provide a description of the specific events that can trigger an increase. Currently, card issuers have the option of including this description inside the table or elsewhere. In order to simplify the table, the existing staff interpretations would be revised so that only the penalty rates could appear inside the table; the explanatory information would have to appear outside the table.

Legislation

During 1999, bills were introduced in the Congress that also would add new disclosure requirements for credit card applications and solicitations. Some bills would require card issuers that offer temporary introductory rates to provide more conspicuous information in their promotional materials about the expiration date and the rate that will apply after that date. The provisions in these bills would address some of the same concerns that are the basis for the Board's regulatory proposal. In light of the pending legislation, however, the scope of the Board's regulatory proposal does not address the rates and terms disclosed in card issuer's promotional materials. Such matters may be the subject of future regulatory proposals once the Congress acts on the proposed legislation or otherwise clarifies its intent.

III. Section-by-Section Analysis

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Section 226.5(a) states the general rule that TILA disclosures for open-end credit plans must be made clearly and conspicuously. Comment 5(a)(1)–1 interprets this standard to require disclosures to be in a ''reasonably understandable form.'' Under the proposal, this standard would be more strictly construed for purposes of the disclosures required under § 226.5a for credit and charge card applications and solicitations. Accordingly, comment 5(a)(1)–1 would be revised to reflect this fact, and include a cross-reference to proposed comments 5a(a)(2)–1 and 2 concerning the special format and location rules for § 226.5a disclosures.

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(a) General Rules

5a(a)(2) Form of Disclosures

Disclosures required by § 226.5a(a)(2) must be clear and conspicuous and prominently located on or with an application or solicitation, or other applicable document. Certain of these disclosures are also required to be in a tabular format. A new comment 5a(a)(2)–1 would be added to establish a stricter standard for satisfying the ''clear and conspicuous'' standard with respect to the tabular disclosures. Proposed comment 5a(a)(2)–2 would provide additional interpretative guidance on the location of the table. Because the proposed interpretations differ from those currently provided, they are intended to have prospective application only.

Currently, information provided in the table meets the ''clear and conspicuous'' requirement if the disclosures are reasonably understandable. Although the tabular format assists consumers by providing key cost information in a single location, consumers may have difficulty using the table due to the amount of information provided in the table and the small type size used by some card issuers to compensate for the amount of information. To ensure that consumers receive meaningful disclosures on a consistent basis, proposed comment 5a(a)(2)–1 would provide that disclosures are clear and conspicuous if the disclosures are both reasonably understandable and readily noticeable. Comment 5a(a)(2)–1 would also provide that as to type size, disclosures in at least 12-point type would be deemed to be readily noticeable. Disclosures printed in less than 12-point type would not automatically violate the standard, but would be judged on a case-by-case basis. For example, disclosures in 10- or 11-point type would probably satisfy the standard, but disclosures in 6-point type would likely be too small to satisfy the standard.

Existing comment 5a(a)(2)–1 addresses the requirement that the table be prominently located. The comment would be redesignated as comment 5a(a)(2)–2, and would be revised to address concerns about the location of tabular disclosures. Currently, some card issuers locate the table on the reverse side of an application or reply form or on the last page of a multi-page solicitation. Consumers may see the promotional materials and fill out the application without being aware that there is additional cost information following the application, on the reverse side of the page or at the end of the promotional materials. Proposed comment 5a(a)(2)–2 would provide additional interpretative guidance; the table would be deemed to be prominently located, for example, if it appears on the same page as the application or solicitation reply form, or the first page of any other applicable document, or on an insert with a

reference to the insert on the application or reply form.

5a(b) Required Disclosures

The table required under § 226.5a provides consumers with key cost information, grouped together in one place to facilitate consumers' use of the information for comparison shopping. These disclosures are not intended to be as detailed as disclosures provided to consumers at account opening; at the time the 1988 Act was adopted, the primary focus was on cost disclosures for purchase transactions. For example, the APR and transaction fees for purchases must be disclosed in the table, but not the APR for cash advances.

Because the services and features offered with credit and charge cards have evolved in recent years, the disclosures required by the 1988 Act may not capture costs commonly assessed on such cards. For example, the periodic rate of interest assessed on a balance transfer (which the card issuer may characterize as a cash advance) is not disclosed in the table. The 1988 Act expressly authorizes the Board to add disclosures to the table, or modify the existing requirements. Accordingly, the Board solicits comment on whether consumers could be aided in comparison shopping by having additional rates and fees disclosed in the table. In particular, commenters should address whether the APR and transaction fees for balance transfers and the APR for cash advances should be included in the table; commenters are requested to specify why the benefits to consumers from the additional information would not outweigh the burden of compliance.

5a(b)(1) Annual Percentage Rate

Section 226.5a(b)(1) requires card issuers to disclose in the table each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR. This section would be revised to require the APR for purchases to be disclosed in the table in at least 18-point type. The type-size requirement would not apply to temporary initial rates that are lower than the APR that will apply after the temporary rate expires, or to penalty rates that may increase upon the occurrence of one or more specific events (such as a late payment or an extension of credit that exceeds the credit limit).

The use of this larger type size is intended to highlight the significance of this information, particularly in light of the larger type sizes typically used by card issuers to promote introductory rates. Although the tabular format generally draws consumers' attention to the table, under existing rules the APR information is often obscured due to the amount of other information provided in the table and the small type size used by some card issuers. The APR for purchase transactions would also be highlighted by requiring that it be listed under a separate heading.

In September 1999, the Board published a proposal that would amend Regulation Z to authorize creditors to use electronic communication to deliver required disclosures. 64 FR 49722 (September 14, 1999). Accordingly, comment is also requested on any specific guidance that may be needed for applying the type size requirements to disclosures made using electronic communication.

Comment 226.5a(b)(1)–6 provides that where there is a temporary initial APR that is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the higher initial rate. The comment would be revised to clarify that in such cases, the initial rate must be disclosed in at least 18-point type, unless the card issuer also discloses the permanently applicable rate in the table, which would have to be in at least 18-point type.

Comment 226.5a(b)(1)–7 requires card issuers to disclose ''penalty rates'' in the table, along with a description of the specific events that can trigger a rate increase and any index or margin used to determine the penalty rate. Currently, card issuers have the option of including this information inside the table or elsewhere. To simplify the table, the comment would be revised so that only the penalty rates would appear inside the table and the additional information would appear outside the table. Card issuers would be required to use an asterisk or other means to direct the consumer to the additional information.

Appendices G and H to Part 226—Open-End and Closed-End Model Forms and Clauses

Comment App. G and H–1 would be revised to clarify that there are special rules for disclosures required under § 226.5a for applications and solicitations for credit and charge cards.

Appendix G to Part 226—Open-End Model Forms and Clauses

The Board provides three model forms to aid compliance with the disclosure requirements of § 226.5a(b). See Appendix G–10(A)–(C). Under the proposal, Appendix G–10(A) would be revised, and a new sample form G–10(D) would be added to illustrate an account with a lower introductory rate and a penalty rate.

Comment G–5 would be revised to clarify that there are format and sequence requirements for certain § 226.5a disclosures.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1070, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. Although the proposal would require creditors to use a specific type size for the APR; require creditors to provide supplemental information about penalty rates outside the table; and require that the table be located on the same page as the application or solicitation reply form, on the first page of any other applicable document, or on a separate insert with a reference to the insert on the application or reply form, the proposed amendments are not expected to have any significant impact on small entities beyond these initial revisions. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the

Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would require creditors to revise disclosures for credit card solicitations and applications by: (1) Requiring the use of a specific type size for the APR, (2) requiring creditors to provide supplemental information about penalty rates outside the table, and (3) requiring that such table be located on the same page as the application or solicitation reply form, on the first page of any other applicable document, or on a separate insert with a reference to the insert on the application or reply form. Although the proposal adds these requirements, it is expected that these revisions would not significantly increase the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,863,754 hours. Because these proposed revisions modify preexisting tables, there is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.5a would be amended by revising paragraph (b)(1) introductory text.

Subpart B—Open-End Credit

* * * * *

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) *Required disclosures.* * * *

(1) Annual percentage rate. Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies, the range of balances to which each rate is applicable shall also be disclosed. ❵The annual percentage rate disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate which is one that will apply upon the occurrence of one or more specific events.❵

* * * * *

3. Appendix G to Part 226 would be amended by:

a. Revising the table of contents at the beginning of the appendix;

b. Revising Model G–10(A); and

c. Adding new Sample G–10(D).

Appendix G to Part 226—Open-End Model Forms and Clauses

* * * * *

G–10(A)—APPLICATIONS AND SOLICITATIONS MODEL FORM (CREDIT CARDS)

Annual percentage rate ❵(APR)❵ for purchases	❵_____% until (*expiration date*) after that, ❵_____[%] ❵%❵.

G–10(A)—APPLICATIONS AND SOLICITATIONS MODEL FORM (CREDIT CARDS)—Continued

⟩Other APRs⟨	⟩Penalty rate: _____%. See explanation below.*⟨
Variable-rate information	Your annual percentage rate may vary. The rate is determined by [(*explanation*).] ⟩_____. See explanation below.**⟨
Grace period for repayment of balances for purchases	You have [____ days] [until _____] [not less than ____ days] [between____ and____ days] [____ days on average] to repay your balance [for purchases] before a finance charge on purchases will be imposed. [You have no grace period in which to repay your balance for purchases before a finance charge will be imposed.]
Method of computing the balance for purchases	
Annual fees	[Annual] [Membership] fee: $_____ per year] [(*type of fee*): $_____ per year] [(*type of fee*): $_____]
Minimum finance charge	$_____
Transaction fee for purchases	[$_____] [_____% of _____]
Transaction fee for cash advances: [$_____] [____% of _____]	
Late-payment fee: [$_____] [_____% of _____]	
Over-the-credit-limit fee: $2	

⟩*Explanation of penalty.
**Explanation of variable rate.⟨

* * * * *

⟩G–10(D)—APPLICATIONS AND SOLICITATIONS SAMPLE (CREDIT CARDS)

Annual percentage rate (APR) for purchases	2.9% until October 1, 2000 after that, **14.90%**.
Other APRs	Penalty rate: 23.90% See explanation below.*
Variable-rate information	Your annual percentage rate may vary. The rate is determined monthly by adding 5.9% to the Prime Rate. See explanation below.**
Grace period for repayment of balances for purchases	25 days on average.
Method of computing the balance for purchases	Average daily balance (excluding new purchases).
Annual fees	No annual fee.
Minimum finance charge	$.50.
Transaction fee for cash advances. 3% of the amount advanced.	
Late-payment fee: $25.	
Over-the-credit-limit fee: $ 25.	

*Explanation of penalty.
**The Prime Rate used to determine your APR is the rate published in _____ on the___day of the prior month.⟨

4. In Supplement I to Part 226, the following amendments would be made:

a. Under *Section 226.5—General Disclosure Requirements, under Paragraph 5(a)(1),* paragraph 1. introductory text would be revised;

b. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations, under 5a(a)(2) Form of Disclosures,* paragraph 1. through paragraph 6. would be redesignated as paragraph 2. through paragraph 7. respectively, a new paragraph 1. would be added, and newly designated paragraph 2. would be revised.

c. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations,* under 5a(b)(1) Annual Percentage Rate, paragraphs 6. and 7. would be revised.

d. Under *Appendixes G and H—Open-End and Closed-End Model Forms and Clauses,* a new sentence would be added after the second sentence in paragraph 1.

e. Under *Appendix G—Open-end Model Forms and Clauses,* paragraph 5. would be revised.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

5(a) Form of disclosures.

Paragraph 5(a)(1).

1. Clear and conspicuous. The *clear and conspicuous* standard requires that disclosures be in a reasonably understandable form. ⟩Except where otherwise provided, the standard⟨ ⟩It⟨ does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. ⟩(See comments 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures.)⟨ The standard does not prohibit: * * *

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules.

5a(a)(2) Form of Disclosures.

1. ⟩*Clear and conspicuous standard.* For purposes of § 226.5a(a)(2) disclosures, ''clear and conspicuous'' means in a reasonably understandable form, and readily noticeable to the consumer. As to type size, disclosures in at least 12-point type are deemed to be readily noticeable for purposes of § 226.5a(a)(2).

2. ⟩*Prominent location.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form, on the first page of any other applicable document, or on a separate insert with a reference to the insert on the application or reply form. Disclosures in other than a tabular format need not begin and end on the same page.⟨ that is, readily noticeable to the consumer. There are, however, no requirements that the disclosures be in any particular location or in any particular type size or typeface.⟩

* * * * *

5a(b) Required Disclosures.

5a(b)(1) Annual Percentage Rate.

* * * * *

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card

issuer must disclose ⟩in the table⟨ the initial rate. ⟩The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate.⟨ The issuer may disclose in the table the⟩ permanently applicable⟨ rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. ⟩In that case, the permanently applicable rate must be in at least 18-point type.⟨

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must also disclose in the table the index and the margin. The issuer must also disclose the specific event or events that may result in imposing the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). ⟦Alternatively⟧ For issuers using a tabular format, the specific event or events ⟩must⟨ ⟦may⟧ be located outside of the table⟩ and an asterisk or other means shall be used to direct the consumer to the additional information.⟨ ⟦if the conditions are noted with an asterisk or other means that direct the consumer to the explanation.⟧ At its option, the issuer may ⟩include in the explanation of the penalty rate⟨ ⟦disclose⟧ the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* * * * ⟩ (But see comment G–5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations).⟨ * * *

Appendix G—Open-End Model Forms and Clauses

* * * * *

5. *Models G–10(A) through G–10(C)* ⟩ *and Sample G–10(D)* .⟨ Models G–10(A) and G-10(B) illustrate the tabular format for providing the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(A) illustrates the permissible inclusionin the tabular format of all of the disclosures. Model G–10(B) contains only the disclosures required to be included in the table, while the three additional disclosures are shown outside of the table. The two forms also illustrate two different levels of detail in disclosing the grace period, and different arrangements of the disclosures. Model G–10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table. ⟩Sample G–10(D) illustrates an account with a lower introductory rate and a penalty rate. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G–10(A), (B), and (C). The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table.⟨ ⟦Disclosures may be arranged in an order different from that in model forms G–10(A), (B), and (C); may be arranged vertically or horizontally; need not be highlighted aside from being included in the table; and are not required to be in any particular type size⟧. Various features from different model forms may be combined; for example, the shorter grace period disclosure in model form G–10(B) may be used in any disclosure. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of ''grace period'') if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 17, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–12911 Filed 5–23–00; 8:45 am]

BILLING CODE 6210–11–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103882–99]

RIN 1545–AX06

Depletion; Treatment of Delay Rental; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations which contain proposed amendments conforming regulations relating to delay rental to the requirements of section 263A, relating to capitalization and inclusion in inventory of costs of certain expenses.

DATES: The public hearing originally scheduled for Friday, May 26, 2000, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on February 8, 2000, (65 FR 6090), announced that a public hearing was scheduled for May 26, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 612 of the Internal Revenue Code. The deadline for outlines of oral comments and requests to speak expired on May 5, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May 17, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May, 26, 2000, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–12987 Filed 5–23–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6603–4]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take action on the ''Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994.'' This action would clarify the final compliance date, update the list of which large municipal waste combustor (MWC) units are affected by the Federal plan, and add a site-specific compliance schedule for one MWC unit.

On November 12, 1998, the EPA adopted the Federal plan to implement emission guidelines for large MWC units located in areas that are not covered by an approved and currently

effective State plan. In a direct final rule published elsewhere in the issue of the **Federal Register**, we are updating the MWC Federal plan to identify large MWC units for which a State plan was approved and became effective since adoption of the Federal plan (November 12, 1998). We are also amending part 62 of title 40 of the Code of Federal Regulations (CFR) to reflect receipt of negative declarations from States that have certified that there are no large MWC units located in the State that would be subject to the Federal plan. We are also amending a table in the Federal plan to clarify that in all cases for all large MWC units, final compliance with all emission limits including the mercury and dioxins/furans emission limits must be achieved by December 19, 2000. Finally, we are amending a table to add a site-specific compliance schedule for one additional MWC unit. Today's action does not change the emission limits for large MWC units nor does it change the level of health protection that the Federal plan provides.

In the ''Rules and Regulations'' section of the **Federal Register**, we are amending part 62 as a direct final rule without prior proposal because we view the amendments as noncontroversial and anticipate no adverse comment. The amendments to the regulatory text appear in the direct final rule and are not published as proposed amendments with this proposed rule. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no adverse comment on this rule, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by June 23, 2000.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attn: Docket No. A–97–45/Category V-D, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania, NW, Washington, DC 20460. Comments may also be submitted electronically. For information on submitting comments electronically, see the **SUPPLEMENTARY INFORMATION** section. Address all comments and data for this proposal, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/Category V-D.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding these amendments, contact Ms. Julie Andresen McClintock at (919) 541–5339, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 1) as shown in **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: This document concerns amendments to ''Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994.'' For further information, the detailed rationale, the administrative requirements, and the specific amendments being made, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. We are publishing the amendments as a direct final rule because we view the amendments as noncontroversial and anticipate no adverse comment.

Electronic Submittal of Comments. Comments may be submitted electronically. Send electronic submittals to: ''A-and-R-Docket@epamail.epa.gov''. Submit electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on these proposed emission guidelines may be filed online at any Federal Depository Library. Comments and data will also be accepted on disks in WordPerfect® version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for this action, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–97–45/ Category V-D.

Regional Office Contacts. For information regarding the implementation of the MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 1. This table has been updated since it was published on November 12, 1998 (63 FR 63193).

TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 1 Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.	(617) 918–1659	(617) 918–1505
Kirk Wieber, Argie Cirillo, Craig Flamm, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands) 290 Broadway, New York, NY 10007–1866.	(212) 637–3381 (212) 637–3203 (212) 637–4021	(212) 637–3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia) 1650 Arch Street, Philadelphia, PA 19103–2029.	(215) 814–2190	(215) 814–2114
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303.	(404) 562–9127	(404) 562–9095

TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS—Continued

Regional contact	Phone No.	Fax No.
Douglas Aburano (MN), Mark Palermo (IL, IN, OH), Charles Hatten (MI, WI), U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604.	(312) 353–6960 (312) 886–6082 (312) 886–6031	(312) 886–5824
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733.	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466.	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105.	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0110

Administrative Requirements

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires EPA to prepare a regulatory flexibility analysis of any rule subject to notice and comment under the Administrative Procedure Act or any other statute unless EPA certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business in this industry with a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town school district or special district or a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

This action is not subject to the requirements of the RFA as modified by SBREFA because it only makes minor technical amendments to some of the rule's requirements and it does not impose any additional requirements. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (see 60 FR 65413). Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that the amendments to the MWC Federal plan will not have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 2, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–11812 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 00–1091]

Wireless E911; New Implementation Deadline for TTY Access to Digital Wireless Systems for 911 Calls

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission, in this document, seeks comment on a proposed revised deadline for compliance with the Commission's rule requiring transmitting of text telephone (TTY) 911 calls on digital wireless systems. The Commission also seeks information on other aspects of the various TTY/digital wireless systems compatibility solutions, including consumer impacts, technical issues, etc. The temporary waivers of the rule previously granted by the Commission will remain in place pending the Commission's establishment of an implementation schedule based on the information received in response to this document. The action is needed to establish a strong, inclusive record on TTY issues that the Commission may use in making well-informed decisions in this critical enhanced 911 (E911) proceeding.

DATES: Submit comments on or before June 19, 2000; submit reply comments on or before July 19, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in CC Docket No. 94–102, DA 00–1091, released May 17, 2000. The complete text of the Public Notice is available on the Commission's Internet site, at www.fcc.gov. It is also available

for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street SW., Washington, D.C. Comments may be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html, or by e-mail to ecfs@fcc.gov.

Synopsis of the Public Notice

1. The Commission seeks comment on a proposed revised deadline for compliance with the Commission's rule requiring transmitting of text telephone (TTY) 911 calls on digital wireless systems, pursuant to 47 CFR 20.18(c). The Commission also seeks information on other aspects of the various TTY/digital wireless systems compatibility solutions, including consumer impacts, technical issues, etc. The temporary waivers of the rule previously granted by the Commission will remain in place pending the Commission's establishment of an implementation schedule based on the information received in response to this Public Notice.

2. The First Report and Order in this proceeding (61 FR 40348, August 2, 1996) required that, as of October 1, 1997, all covered wireless carriers be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of TTY devices. To date, however, carriers operating digital wireless systems have been unable to comply with this requirement because digital systems have been unable to accurately pass the Baudot-encoded audio tones produced by TTY devices. The Commission suspended enforcement of the TTY requirements until December 1998 and issued over 100 temporary waivers of the rule, which remain pending, while the industry worked on a solution. Recent technological developments now lead the Commission to request further comment regarding an implementation deadline for compliance with § 20.18(c).

3. The Commission first seeks comment on its tentative view that December 31, 2001, represents a reasonable deadline for implementation of a digital wireless TTY solution. The Commission proposes that all wireless carriers begin complying with § 20.18(c) on or before this date, and invites comment on whether this deadline would permit equipment manufacturers and carriers sufficient time to complete the tasks associated with implementing a system solution of this kind. Commenters are asked to identify the specific tasks they expect to be required to implement a TTY solution and to provide estimates of how long each task is expected to take.

4. In addition, the Commission seeks comment on a possible program for monitoring the progress of TTY compatibility. Specifically, the Commission invites comment on what type of monitoring program might be appropriate, whether additional regulation is needed to facilitate monitoring progress, and how the Commission might best monitor the progress of technological developments and the adoption of standards.

5. The Commission solicits comment regarding enforcement of compliance with § 20.18(c). The Commission seeks comment on the relationship of section 255(b) of the Communications Act of 1934 (which requires manufacturers to ensure the accessibility of equipment) and section 251(a)(2) of the Act (which requires that carriers not install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255) to implementation of § 20.18(c). The Commission also seeks comment on whether and how the Commission might use its equipment authorization process to enforce compliance with § 20.18(c).

6. The Commission further invites comment on the impact of TTY/digital wireless compatibility solutions on consumers. The Commission emphasizes that carriers are expected to make their digital wireless systems compatible with TTY devices without causing potential adverse impacts to consumers. Thus, the Commission invites comment on what negative impacts to consumers might result from TTY compatibility efforts, the extent and nature of costs and/or inconveniences to consumers, and, to the extent that any additional costs or inconveniences are identified, what steps carriers can take to eliminate or mitigate such adverse impacts, especially those that could affect safety of life.

7. The Commission also seeks comment on Ericsson's proposed solution for TTY/GSM compatibility, which will apparently involve a ''smart cable'' that itself operates to convert the Baudot tones to a new signal that is suited for transfer over a digital voice path without the need for software changes in the handset. The Commission requests comment on whether this type of solution for GSM, or any other similar cable, will be acceptable to TTY users, and whether this type of solution will impose additional costs and/or inconveniences on consumers.

8. Finally, the Commission seeks comment on the impact the international use of GSM air interface has on development and implementation of a TTY solution.

Procedural Matters

9. Pursuant to § 1.45 of the Commission's Rules, 47 CFR 1.45, interested parties may file comments on the proposed implementation deadline no later than June 19, 2000. Replies shall be filed no later than July 19, 2000. All comments shall reference the docket number of this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number of this proceeding. Parties filing electronically should also e-mail a copy of their comments to pforster@fcc.gov. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary (Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554) and a diskette copy to the Commission's copy contractor (International Transcription Service, Inc. (ITS), CY–B400, (202) 857–3800).

10. Pursuant to § 1.1206 of the Commission's Rules, 47 CFR 1.1206, this proceeding is a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

11. Copies of this Public Notice in alternative formats (computer diskette, large print, audio-cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or at bmillin@fcc.gov. The Public Notice also will be available at: http://www.fcc.gov/cib/dro/.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13033 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 00–7381]

RIN 2127–AH66

Federal Motor Vehicle Safety Standards; Side Impact Protection; Grant in Part, Denial in Part of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant in part, denial in part of petition for rulemaking.

SUMMARY: This document responds to a petition for rulemaking from the Association of International Automobile Manufacturers, the Insurance Institute for Highway Safety, and the American Automobile Manufacturers Association. Petitioners asked us first to determine that dynamic side impact provisions of a European regulation (consisting of performance requirements, crash test barrier, test barrier face, and test procedures) are at least ''functionally equivalent'' to those in the U.S. side impact standard. Based on the assumption that that determination will be made, the petitioners then asked that we add the dynamic provisions of the European regulation to the U.S. standard as a compliance alternative in the short run. Based on their belief that the European dynamic provisions are superior to those in the U.S. standard in some respects, they want us to replace the current dynamic provisions of the U.S. standard with those of the European regulation (slightly modified) in the long run.

This document grants the portion of the petition requesting that we open a rulemaking proceeding to consider replacing the side impact test dummy currently specified in the U.S. standard with an improved version of the dummy specified in the European regulation. We are denying the remainder of the petition.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Dr. William Fan, Office of Crashworthiness Standards, Light Duty Vehicle Division (telephone 202–366–4922). For legal issues: Deirdre Fujita, Esq., Office of Chief Counsel (202–366–2992). Both of these officials can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Background

NHTSA estimates that about 4,500 fatalities occur annually to occupants of motor vehicles resulting from contact between the side interior of the vehicle and the abdomen, chest, pelvis and upper extremities. To address the problems of side impact deaths and injuries, NHTSA issued Federal Motor Vehicle Safety Standard No. 214, ''Side Impact Protection'' (49 CFR 571.214). The standard specifies both quasi-static performance requirements, as well as dynamic performance requirements, for protection of occupants in side impact crashes. Under the dynamic requirements, a vehicle must provide protection to occupants' thoracic and pelvic regions, as measured by the accelerations registered on an instrumented side impact dummy in a full-scale crash test. In the test, the vehicle (known as the ''target'' vehicle) is struck in the side by a moving deformable barrier (MDB) simulating another vehicle.

The European Union also has a side impact safety regulation, EU Directive 96/27/EC [1] (hereinafter EU 96/27/EC), that has a dynamic test requirement. Similar to the U.S. standard, EU 96/27/EC incorporates an anthropomorphic test dummy, called EuroSID–1 (a second-generation test dummy derived from its predecessor, ''EuroSID''). Crash test forces experienced by the dummy must not exceed specified limits when the target vehicle is struck by a moving deformable barrier simulating a striking vehicle. Limits are specified for head injury criterion, rib deflection criterion, viscous criterion, abdominal force, and pubic symphysis force.

Petition

In December 1997, the Association of International Automobile Manufacturers (AIAM), the Insurance Institute for Highway Safety (IIHS), and the American Automobile Manufacturers Association (AAMA) [2] petitioned us to ''harmonize'' Standard 214 with EU 96/27/EC. Petitioners asked us to take several actions. First, they asked us to determine that dynamic side impact provisions of a European regulation (consisting of performance requirements, crash test barrier, test barrier face, and test procedures) are at least ''functionally equivalent'' to those in the U.S. side impact standard. Second, based on the assumption that that determination will be made, the petitioners asked that we add the dynamic provisions of the European regulation to the U.S. standard as a compliance alternative in the short run. Third, based on their belief that the European dynamic provisions are superior to those in the U.S. standard in some respects, they asked us to replace the current dynamic provisions of the U.S. standard with those of the European regulation in the long run.[3]

Supporting Argument, Data and Analysis

The petitioners conceded that when NHTSA adopted its side impact dummy (SID) in 1990, SID and TTI(d) [4] were more fully developed than other dummies and injury assessment criteria. They recited the reasons given by NHTSA then, and over the next several years, for not adopting EuroSID or even allowing it as an alternative dummy.

In its 1990 final rule adopting SID, NHTSA said:

> One of the problems discovered in NHTSA's EuroSID sled tests was that the ribs were bottoming out, which may have invalidated the V*C [5] measurements being made. This condition was characterized by a flat spot on the displacement-time history curve, while the acceleration-time history curve showed an increase with time until the peak g was reached. Although considerable attempts were made to correlate V*C and TTI(d), the deflection data collected continued to be questionable.
>
> (October 30, 1990; 55 FR 45757)

[1] This directive is identical to Economic Commission for Europe Regulation (ECE) 95/01. The directive was approved by the EU in October 1996. It applies to new or redesigned models of passenger vehicles introduced after October 1, 1998, and will apply to all vehicles manufactured after October 1, 2003.

[2] This association has since ceased to exist.

[3] Specifically, the petitioners requested that we issue a final rule— (a) Immediately giving manufacturers the option of meeting Standard 214 by certifying to either: (1) The existing dynamic requirements, assessment criteria and test procedures of Standard 214; or (2) Those of European Directive 96/27/EC or the United Nations/Economic Commission for Europe (ECE) Regulation 95/01, as modified; and (b) Requiring, beginning at the end of the first 7 full model years after the final rule, compliance with a modified version of European regulation.

That version, referred to by the petitioners as the ''modified European regulation,'' would differ from the existing European regulation in two respects. First, it would specify the use of an upgraded version of EuroSID–1. Second, it would provide placing a dummy in the front and rear outboard seating positions, as specified in the test procedures of the U.S. standard. The existing European regulation specifies that a test dummy is positioned in only the front outboard seating position on the struck side of the test vehicle.

[4] TTI(d), which stands for thoracic trauma index, is a measure of side impact injury. TTI(d) correlates measurements on the test dummy with thoracic injury severity observed in cadaver testing conducted for the agency. TTI(d) is essentially a statistical estimate of probability of various injury severity levels derived from data on age, body weight, and peak accelerations measured at specific locations on the test dummy.

[5] V*C, viscous criterion, another way of measuring thoracic injury, is based on combined rib displacement and velocity. [Footnote added.]

In the final rule amending Standard 214 itself, the agency said:

NHTSA also notes that there are a number of characteristics associated with the European test procedure that make it inappropriate, at this time, for a U.S. safety standard. The European test dummy (EuroSID), while capable of assessing injury potential and providing insight into side impact crash occupant protection, needs further refinement before it can be used as a regulatory tool.

These ongoing efforts include the development of biofidelity response corridors to assure the EuroSID responds in a human-like manner, the evaluation of the repeatability and reproducibility of the test dummy, and the demonstration of its durability in full-scale crash tests. The EuroSID is progressing in all of these areas. Additionally, the urethane foam face of the European barrier appears to break down and bottom out, creating unexpectedly high dummy acceleration responses due to the unrealistic crash conditions it imposes. * * *

(October 30, 1990; 55 FR 45722, at 45740)

These problems led NHTSA to conclude in the dummy final rule that the best dummy available for incorporation into Standard 214 was the U.S. side impact dummy (SID), which had been developed between 1979 and 1982:

NHTSA recognizes that BioSID and EuroSID have potential advantages over SID to the extent that they can measure V*C or other compression-based injury criteria in addition to TTI(d). Specification of EuroSID as an alternate test device could also promote international harmonization.

However, the agency does not believe that these potential advantages should lead to a delay in this rulemaking for further consideration of alternate dummies. NHTSA believes that TTI(d) is a reliable predictor for thoracic injury and that SID is fully developed and validated. Since SID is ready now, and a final rule specifying SID can result in significant safety benefits, the agency believes it is appropriate to now go to a final rule using the SID.

Assuming that NHTSA's review of the BioSID is satisfactory, the agency intends to propose the use of the BioSID as an alternate test device. Europe is continuing to work on the EuroSID. If the agency obtains data showing that EuroSID compares satisfactorily with SID, it may also propose that dummy as an alternate test device.

(October 30, 1990; 55 FR 45757)

The petitioners argued that much has changed since the early 1990s. EuroSID has evolved since 1993. There is now a EuroSID–1 which incorporates enhancements to improve the biofidelity of the dummy and to make assembly, disassembly and certification of the dummy easier. They noted that various governments and regional and international standards organizations have concluded since then that SID/TTI(d) are no longer the best dummy/injury assessment criterion to help reduce the risk of injury to vehicle occupants in side impacts. Instead, those governments and organizations have adopted a side impact regulation that incorporates EuroSID–1 and its deflection-based injury criteria, chest compression and V*C. It is that side impact regulation that petitioners asked NHTSA to adopt.

Petitioners believe that their argument that EuroSID–1, its associated injury criteria, and 96/27/EC's test procedure are suitable as alternatives to the current requirements of Standard 214 is supported by data from biomechanical and other research programs. First, they cited unspecified technical data from NHTSA's continuing biomechanical research. Second, they cited AAMA's comparisons of EuroSID–1 and SID performance. The petitioners believe that EuroSID–1 and its deflection-based injury criteria correlate better than SID with cadaver data. More specifically, they stated that research studies sponsored by AAMA have shown that, while cadavers were sensitive to both padding stiffness and padding type and that softer padding would help further reduce the risk of injury,[6] TTI(d) (the injury criterion used by SID) did not show the benefits of softer over stiffer padding.[7] In contrast, the study found that chest compression and V*C (the injury criteria used by EuroSID) were good predictors of thoracic injury. *Id.* Petitioners also referred to a report comparing the responses of cadavers to that of EuroSID in full-scale side impact crash tests. Petitioners stated that the authors of the report concluded that EuroSID showed a good correlation between several dummy protection criteria and cadaver injury severity. (The petition did not provide information comparing SID with cadaver responses in full scale tests.) Petitioners further stated: ''From all of this we conclude, EuroSID–1 and its deflection-based injury criteria correlate better [than SID] with the cadaver data.'' They also cited several AAMA-sponsored studies of side impact dummy performance in full vehicle impact tests.

Next, the petitioners cited several comparative assessments of SID and EuroSID–1, and one comparative assessment of EU 96/27/EC and Standard 214. First, they cited the Monash University report (Side Impact Regulations Benefits) prepared for the Federal Office of Road Safety of the Government of Australia. That report ''documents the study that determined both * * * [ECE] Regulation 95 and FMVSS No. 214 would lead to vehicles designs that, though different in approach, are essentially equivalent in performance, i.e., functionally equivalent.''

Second, the petitioners cited comparisons by the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies. The petitioners said that EuroSID–1 is acceptable to ISO because of its biofidelity and repeatability, while SID is not because it is insufficiently biofidelic. The petitioners based these statements on resolutions adopted by the ISO Working Group on Anthropomorphic Test Devices in 1990 and on ISO's adoption of a side impact test procedure incorporating EuroSID as an international standard in 1997. The petitioners said that the ISO test is patterned after EU 96/27/EC.

The petitioners then referred to comparisons by Transport Canada to support their view that EuroSID–1 and its associated injury criteria are superior to SID and its criteria because they can measure more or more complete injury-causing force mechanisms than SID and its criteria. They said that Transport Canada has expressed dissatisfaction with SID and has stated that there is a need for a dummy that is capable of supporting deflection and force criteria and that can measure abdominal loading. Petitioners stated:

In 1991, Transport Canada concluded that the SID, with its arm down position, ''has the potential of masking the effects of changes in the loading introduced through design countermeasures.'' They went on to conclude, based on their testing, that ''Similar TTI values can be produced by completely different loadings * * *. [Test data showed] a relatively high TTI value with almost no deformation of the chest (i.e., principally as a result of rigid-body accelerations).'' [8]

According to petitioners, Transport Canada has also indicated that:

Side interior designs or changes which provide low TTI values are not necessarily consistent with those required to minimize injury potential to the abdomen * * * [T]he absence of any performance criterion addressing abdominal injury clearly represents a major deficiency in the current requirements of Standard 214. The problem could be remedied by replacing the US SID

[6] Cavanaugh, *et al.,* ''SID Response Data in a Side Impact Sled Test Series,'' Society of Automotive Engineers 920350.

[7] Cavanaugh, *et al.,* ''Injury Response of the Thorax in Side Impact Cadaveric Tests.''

[8] Dalmotas, *et al.,* ''Side Impact Occupant Protection Technologies,'' SAE SP–851, February 1991.

with * * * Eurosid 1 * * *. Given current biomechanical knowledge, to base regulations on a dummy capable only of supporting acceleration-based measurements serves only as a disincentive to manufacturers to seek out more effective means of reducing injury within the constraints imposed by the regulation.[9]

In addition, petitioners stated that Transport Canada has also stated in a report that:

> [I]n its tests, ''vehicle models * * * showed exceptionally low TTI values when tested with the US SID but exceptionally high abdominal deflection, V*C, and force values when tested with either the Eurosid or BIOSID under identical test conditions. The need for a regulatory dummy capable of supporting deflection and force criteria will become all the more important in the near future as competitive pressures are likely to force vehicle manufacturers to accelerate the development and fitment of side air bag systems.'' [10]

The petitioners argued that their petition provides ''a means to not only harmonize safety standards and take a step toward a single harmonized side impact test procedure and test dummy, but to further improve safety for the American public.'' Petitioners said that NHTSA itself has cited the side impact standards and regulations as a prime example of the need to harmonize, especially given their different test dummies and injury criteria. They further stated:

> The agency has correctly stated that people in Europe are exposed to the same causes of injury in side crashes as are vehicle occupants in the U.S. People all over the world are essentially the same and there is no compelling reason to measure their potential for injury using different test dummies and different injury criteria.

The petitioners noted that the dummy, injury criteria, and test procedures of the EU side impact directive were adopted by the ECE prior to their adoption by the EU and have since been accepted or announced for future acceptance in Japan, Australia and the Gulf Cooperation Council. In addition, the Russian Federation and Israel are said to ''have acted to adopt ECE Regulation 95.''

The petitioners acknowledged that the European dummy needs to be improved and that improvements are being planned for the dummy, and in fact base their petition on the making of those improvements. Petitioners stated that TNO, the supplier of EuroSID–1, is working on an ''upgrade package'' that includes possible improvements to the dummy's rib modules, back plate, pelvis, proximal femur, shoulder and abdominal instrumentation. Improvements may also be made to the procedure for calibrating the abdomen, neck and lumbar spine. The petitioners concluded by urging NHTSA

> * * * to adopt the upgraded Eurosid-1 and to work jointly with the Commission of the European Union for adoption of an upgrade package in both the EU Directive and the ECE Regulation.

Similarities and Differences Between the U.S. Standard and the ECE Regulation

a. *Test procedure*

Standard 214's dynamic test is designed to simulate what would happen in the real world if a vehicle were traveling 48 kilometers per hour (km/h) (30 miles per hour, mph) at a 90 degree angle to a second vehicle traveling 24.2 km/h (15 mph) and struck that second vehicle in the side, i.e., a typical intersection crash involving cross traffic. While a test involving two moving vehicles could be used, it is more difficult to conduct tests yielding repeatable results when testing in that manner.

The simulation is achieved by ''crabbing'' the front and rear wheels of the MDB at an angle of 27 degrees to the right of its longitudinal centerline in a left side impact and to the left of that centerline in a right side impact. The MDB moves at that angle into the side of the target car. The closing speed of the MDB is 54 km/h (33.5 mph). These aspects of the procedure were selected so that the test simulates the typical intersection crash discussed above. The agency determined that the 30 mph/15 mph combination is a representative of the threshold of serious chest injury. The orientation of 90 degrees was selected because it is the one most frequently seen in field data. Instrumented side impact dummies are placed in the outboard front and rear seating positions on the side of the vehicle which is being struck.

Under EU 96/27/EC's test procedure, the wheels of the barrier are aligned straight ahead, not crabbed to the side. The barrier moves straight ahead at a 90 degree angle to the target vehicle at 50 km/h (31 mph). EU 96/27/EC specifies only one dummy be used in the compliance test. This dummy is placed in the front seat of the struck side of the test vehicle.

b. *Barrier*

The moving deformable barrier (MDB) used in Standard 214 tests has a total mass of 1,367 kg (3,015 lb). The barrier face is aluminum honeycomb in design. Its contact face is 559 mm (22 in) high and 1,676 mm (66 in) wide. The top of the barrier face is 838 mm (33 in) above the ground and the bottom edge is 280 mm (11 in) above the ground. The protruding portion of the barrier simulates a bumper. The bottom surface of the ''bumper'' is 330 mm (13 in) above the ground, and the top surface is 533 mm (21 in) above the ground.

The European barrier has a mass of 950 kg (2,095 lb), compared to 1,367 kg (3,015 lb) for the U.S. barrier. The face of the European moving deformable barrier is smaller than that of the U.S. barrier. The European barrier is narrower, 1,500 mm (59 inches), compared to 1,676 mm (66 inches) for the U.S. barrier. The bottom edge is the most forward part of the European barrier and is 300 mm (11.8 in) above the ground. In comparison, the bottom edge of the U.S. barrier face is 280 mm (11.0 in) above the ground and the bottom edge of the U.S. ''bumper'' is 330 mm (13.0 in) above the ground. The top edge of the European ''bumper'' is 550 mm (21.7 in) above the ground, while the top edge of the U.S. ''bumper'' is 533 mm (21 in) above the ground. The face of the European barrier is divided vertically into thirds with the center third representing the area of the engine block. The right 1/3 of the barrier face and the left 1/3 of the barrier face, simulating the fender areas, are softer than the corresponding portions of the U.S. barrier face.

c. *Injury Criteria*

Standard 214 requires that the dummies must exhibit rib, spine and pelvic accelerations below specified thresholds in order for the vehicle to pass the test. The rib and spine accelerations are combined into a single metric called the Thoracic Trauma Index (TTI(d)) which has an 85g limit for 4-door vehicles and a 90g limit for 2-door vehicles. There also is a pelvic acceleration limit of 130g.

EU 96/27/EC measures five dummy parameters to determine vehicle performance. The head injury criterion (HIC) is derived from head accelerations and is computed only if head contact occurs, and must remain below 1000. A rib deflection criterion (RDC) of 42 mm (1.7 in.) is allowed in the thorax along with a viscous criterion (V*C) of 1 m/s. The viscous criterion is calculated from combined rib displacement and velocity. The abdominal force is limited to 2.5 kN (562 lb). Finally, the pubic symphysis force, which is in the pelvic region, must be less than 6 kN (1350 lb).

[9] Dalmotas, *et al.,* ''Side Impact Occupant Protection Technologies,'' SAE SP–851, February 1991.

[10] Dalmotas, *et al.,* ''Side Impact Opportunities,'' Fifteenth International Technical Conference on the Enhanced Safety of Vehicles, May 1996.

Congressional Mandate to Explore Harmonization Possibilities

On September 16, 1996, in Congressional Conference Report 104–785 for the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1997, the conferees directed NHTSA to study the differences between the U.S. and then-proposed European side impact regulations and to develop a plan for achieving harmonization of these regulations. In response to this directive, NHTSA submitted a side impact harmonization plan to Congress in April 1997 (''Report to Congress NHTSA Plan for Achieving Harmonization of the U.S. and European Side Impact Standards,'' April 1997, see docket NHTSA 1998–3935–1 of the Department's docket management system.)

In the report, we described how we would follow our functional equivalence process in determining whether Standard 214 and the modified European regulation are functionally equivalent.[11] This process is used to determine whether the vehicles or equipment manufactured under a foreign standard produce more or at least as many safety benefits as those produced by the vehicles or equipment manufactured under a similar U.S. standard.

The first step in the process is to obtain and assess any available industry and government research data comparing the two regulations, especially full-scale vehicle compliance tests. We stated in the report that in parallel with this assessment of outside data, the agency would carry out an initial phase of testing to the EU regulation.[12] The vehicles tested would be identical to vehicles which successfully completed U.S. compliance testing. We anticipated that completion of this initial phase of testing and data analysis would place NHTSA at a major decision point in the functional equivalence process. That is, we would have to determine whether there were sufficient data to assess the functional equivalency of the two standards, or if not, whether additional research could be conducted to generate data. We recognized that any non-trivial problems with the test procedure or dummy must be identified as part of the determination of the acceptability of the EU regulation as an alternative or replacement for the U.S. regulation. We further stated:

> If the EU regulation is found to be an acceptable alternative or replacement, rulemaking in the U.S. could be initiated and the functional equivalence/harmonization process would be complete. *However, it may be that there is not sufficient information for this determination or that functional equivalence is clearly not possible.* If it is only a matter of conducting additional vehicle tests and analyses, NHTSA would continue such an effort and iterate through the Functional Equivalence Process steps. *However, if other problems are apparent in performing the EU tests * * * or if each standard indicates unrelated safety performance for the same vehicle, the harmonization plan will need to proceed in a different direction * * *.* The next steps in this different direction would be to determine what additional information is needed to accept or exclude functional equivalence and any other potential harmonization solutions.
>
> (Emphases added.)

Agency Test Results

As a first step in assessing the functional equivalence of the two regulations, we tested vehicles that were certified to Standard 214 using the procedures and criteria of EU 96/27/EC (as modified, with a test dummy placed in the rear outboard seating position in addition to the front outboard position). The following eight vehicles were tested: a MY 1997 Lexus SC300, 1997 Ford Mustang, 1997 Mitsubishi Eclipse, 1995 Geo Metro, 1996 Ford Taurus (the EU test was performed by Ford Motor Company), 1995 Volvo 850 SW, 1997 Hyundai Sonata, and a 1997 Nissan Sentra. The vehicles provided a range of marginal to good performers relative to Standard 214 and represented a wide range of manufacturers. The results indicated that the ranking of the eight vehicles, according to their relative performance, was not the same when tested under EU 96/27/EC and Standard 214. Additionally, a measurement anomaly in the European test dummy (EuroSID–1) related to the rib displacement was present in most, if not all, tests. This anomaly, along with the limited amount of comparative test data, did not allow a positive determination of functional equivalence of the two side impact regulations. We could not conclude from this set of testing whether vehicles designed to meet the EU regulation will meet the U.S. regulation. (Results of the vehicle testing were discussed in NHTSA's report to Congress on the agency's progress in assessing the functional equivalence of the two regulations. ''Status of NHTSA Plan for Side Impact Regulation Harmonization and Upgrade, Report to Congress, March 1999.'' See docket NHTSA–98–3935–10.)

Discussion and Analysis

Short Run

Available data and analyses do not support a finding of functional equivalence. Petitioners provided no data supporting their request. The data generated by our eight vehicle tests are insufficient to enable us to determine whether EU 96/27/EC is functionally equivalent to Standard 214.

NHTSA believes that there is no point in continuing the test program and generating additional data in an effort to assess whether the European regulation is functionally equivalent to Standard 214. To be adopted as or added to a U.S. standard, a non-U.S. standard must meet the statutory criteria of our safety statute, 49 U.S.C. 30101 *et seq.*, apart from its functional equivalency to a U.S. standard. Those criteria specify that each motor vehicle safety standard must be practicable, meet the need for motor vehicle safety, and be stated in objective terms (49 U.S.C. 30111(a)).

We conclude that the results of the testing, in particular the measurement anomalies in the EuroSID–1, do not support a finding that EU 96/27/EC is appropriate for addition in the short run as a compliance alternative. There are several reasons for this conclusion.

First, EuroSID–1 is not biofidelic. It has a displacement measurement anomaly that is depicted as plateaus or ''flat-tops'' on the test data plots. The flat-tops were present in the data generated by the dummy in the driver position for all the vehicles tested and by the dummy in the rear seat of three of the six vehicles.

A test dummy that is not biofidelic is unsuitable as a compliance test device. The less biofidelic a test device is, the less likely its results are reasonable and useful as a measure of the protection a vehicle provides to a real occupant. A test dummy that is not representative of a human could lead to vehicle designs that provide little or no benefit to real occupants.

Second, the agency believes that the EU barrier is less representative than the Standard 214 barrier of the side impact crash environment in this country. Due to the increased market share of light

[11] The functional equivalence process was described in a November 14, 1996 **Federal Register** document and later incorporated as Appendix B to our rulemaking procedures (49 CFR Part 553) by a May 13, 1998 final rule (63 FR 26508).

[12] This series of tests was only one part of a general matrix that we had prepared to assess the comparative performance of vehicles relative to the two regulations. The general matrix was to include testing of European production vehicles to determine how well such vehicles perform relative to Standard 214. The matrix also was to include testing of vehicles designed for both U.S. and European markets to the requirements of both regulations. Vehicles equipped with side air bag systems was also part of this matrix as they are becoming prevalent in both the U.S. and European fleet.

trucks, vans and sport utility vehicles (LTVs), a large portion of the current U.S. side impact casualties results from impacts with the LTV class of vehicles. The EU moving deformable barrier is lighter and less stiff than the barrier used in Standard 214 testing. Side impact countermeasures based on the EU barrier may lead to fewer safety benefits than those resulting from use of the Standard 214 barrier. NHTSA notes further that the specifications for the EU barrier allow non-metallic faces that disintegrate in some impacts.

Further, we are unable to agree with Petitioners that an analysis by Monash University for the Government of Australia (''Side Impact Regulations Benefits,'' June 1995) [13] furnishes an adequate basis for our making a finding of functional equivalence. The outcome of the Monash harm reduction analyses is highly dependent on assumptions. Thus, the assumptions must be carefully grounded in real world crash data and in crash test data. We believe that the assumptions of the Monash analysis were not so grounded.

The first assumption was that a regulation based on SID and TTI(d) would result in a 2 AIS reduction in injury, while EuroSID and V*C measures would result in a 3 AIS injury reduction. In other words, if the baseline vehicle injury level were an AIS 4, the Monash report estimates that the injury level of a vehicle meeting Standard 214 would be an AIS 2 and a vehicle meeting EU 96/27/EC would be an AIS 1.

We do not believe that an effectiveness estimate can be made without knowing the current compliance with the injury criteria and how much improvement is needed to meet the injury criteria.[14] There is no logic provided that would lead one to conclude that EU 96/27/EC is more effective than, or even as effective as, Standard 214. The report does not include data or analysis to support the estimates about the difference in effectiveness between Standard 214 and the ECE Regulation 95. It does not discuss current compliance with the injury criteria of EU 96/27/EC criteria or how much improvement is needed in the fleet to meet the injury criteria.

The second assumption made by the authors of the report was that an overall injury reduction of 1 AIS is expected for SID and 3 AIS for EuroSID, assuming an abdominal injury criterion is applied when using the latter dummy, because SID cannot measure abdominal loads while EuroSID can. The report does not discuss or analyze injury criteria or baseline test data, nor explain how use of EuroSID would necessarily lead to the greater reduction in AIS injury level.

The third assumption was that EuroSID will have an additional benefit of a 2 AIS injury reduction for head contacts with the side rails. We have never seen the head of the dummy in the front seat of a vehicle strike the side rail in any of our side impact tests. Accordingly, it is unclear why the authors concluded that use of EuroSID in the test would lead to improvements of the side rail.

Long run

The agency has further determined that EU 96/237/EC is unacceptable as a replacement of Standard 214. As noted from real world crash data, the side impact crash environment in this country is changing. While the current moving deformable barrier used in Standard 214's dynamic test may be too small and too light to represent the future U.S. fleet, the barrier used in EU 96/27/EC is even smaller in size and mass. Instead of adopting the smaller ECE barrier, NHTSA plans to consider adopting a more representative barrier than the current barrier used in Standard 214. The agency's resources would be better utilized upgrading Standard 214 to address the changing U.S. side impact crash environment than adopting the smaller ECE barrier.

However, it does not appear that the problems with EuroSID–1 are insurmountable. NHTSA tested EuroSID–1 with prototype modification to the ribs utilizing ball bearing cylinders in the posterior piston cylinders. This modification was developed by Advanced Safety Technologies Corporation, a dummy manufacturer in this country, to reduce the flat-topping phenomenon. Results to date indicate a significant reduction in the flat-tops and a subsequent increase in maximum rib displacements. With further development to cure continuing biofidelity problems, a newer version of EuroSID–1 might become acceptable as a replacement for SID.

Near Term Agency Research

NHTSA is carrying out the research plan set forth in the March 1999 Report to Congress. Current activities include evaluating ES–2 (a modified EuroSID–1), conducting out-of-position testing with side air bags, and conducting an in-depth evaluation of field crash data so that the Standard 214 barrier can be upgraded to be more representative of current and future striking vehicles.

Agency Decision

Based on the foregoing, we are denying the portion of the petition requesting us to conclude that EU 96/27/EC is functionally equivalent to Standard 214 and to add the ECE regulation to Standard 214 as a short run compliance alternative. We are also denying the portion of the petition requesting us to replace Standard 214 in its entirety with the ECE regulation.

However, we are granting the petition to the extent that it requests us to examine replacing SID with an enhanced side impact dummy. If the biofidelity problems with EuroSID–1 can be solved, the greater measurement capabilities of the dummy would make its adoption attractive as a way of upgrading Standard 214. Thus, our first steps will be to work with the Europeans to cure the dummy's biofidelity problems. Once that is accomplished, we will consider issuing a proposal to replace SID with the improved side impact dummy. (Adopting a more advanced test dummy means that we will also be considering the appropriate injury criteria to adopt with the dummy into our side impact protection standard. If we eventually propose to replace SID with an improved EuroSID–1, we might propose adopting the injury criteria now in EU 96/27/EC as well.) There is a reasonable possibility that a test dummy that is technically superior to SID could be incorporated into Standard 214 in place of SID.

This grant of the petition is consistent with other agency side impact protection initiatives. It is consistent with our grant of a July 1998 rulemaking petition from Advocates for Highway and Auto Safety (Advocates) requesting us to upgrade Standard 214. Advocates petitioned us to increase the safety of occupants of passenger cars and LTVs in side crashes with larger, heavier and stiffer vehicles. Among other suggestions, they suggested using EuroSID–1 instead of SID. Today's granting of the petition is also consistent

[13] Petitioners state: The Monash University analysis utilized the concept of ''harm,'' first developed by NHTSA in 1982 and subsequently used in several NHTSA reports. Monash considered both car-to-car and fixed object impacts. Their analysis was thorough and considered ''harm'' to the head, face, thorax, abdomen, pelvis and upper and lower limbs. The Australian Government report actually showed that the potential benefit of ECE Regulation 95 as estimated to be 8 percent *higher* than that of FMVSS 214. Nevertheless, the report advocated acceptance of *either* standard. This appears to be the type of comparative study that the NHTSA concluded was needed when it terminated the alternative side impact dummy rulemaking.

[14] The report itself recognizes that ''Unlike the US standard, there was little or no information available on the likely effects of ECE Regulation 95 in reducing injuries'' (p. ix). It further states (p. 1) that ''* * * (incidental reports by Wall, 1992, and Lowne, 1994 provide some crude estimates of the overall reductions in injury likely for ECE95 but were by no means, definitive).''

with our support of the development of a next-generation side impact dummy called WorldSID. That dummy is being developed by industry representatives from the U.S., Europe and Japan, and the European and Japanese governments. It is anticipated for prototype completion in the fall of 2000. WorldSID is expected to be technically superior to all other predecessor side impact dummies, including EuroSID–1. We have been and continue to be highly interested in the development of WorldSID. A future upgrade of Standard 214 could involve the adoption of a technically superior dummy such as WorldSID.

In accordance with 49 CFR Part 552, this completes our review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50

Issued on May 18, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–13051 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000515139-0139-01; I.D. 041200D]

RIN 0648–AO03

Atlantic Highly Migratory Species (HMS); Atlantic Bluefin Tuna Specifications and HMS Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed annual quota specifications and regulatory amendment; public hearings; request for comments.

SUMMARY: NMFS proposes specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quota and General category effort control specifications for the 2000 fishing year. NMFS also proposes to amend the regulations governing the Atlantic HMS fisheries to adjust the date on which the BFT General category fishing season ends; adjust the date on which BFT allocations become available to Atlantic tunas Purse Seine category vessel owners; authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year on a per vessel basis; revise text regarding restricted fishing days (RFDs) in the General category BFT fishery; and revise text regarding authorized gear in the North Atlantic swordfish fishery. The proposed specifications and regulatory amendment are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS will hold public hearings to receive comments from fishery participants and other members of the public regarding the proposed specifications and regulatory amendment.

DATES: Written comments must be received on or before June 19, 2000.

The public hearings dates are:

1. Tuesday, May 30, 2000, 7–9 p.m., Gloucester, MA.

2. Wednesday, May 31, 2000, 9–11 a.m., Silver Spring, MD.

ADDRESSES: Written comments on the proposed specifications and regulatory amendment should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Comments also may be sent via facsimile (fax) to (301) 713–1917. Comments will not be accepted if submitted via e-mail or the Internet.

The public hearing locations are:

1. Silver Spring–NMFS, SSMC III—Room 4527, 1315 East-West Highway, Silver Spring, MD 20910.

2. Gloucester–Milton Fuller School, 4 School House Road. Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) that was adopted and made available to the public in April 1999. The HMS FMP and the implementing regulations established percentage quota shares for each of the domestic fishing categories of the ICCAT-recommended U.S. BFT landings quota of 1,387 metric tons (mt). These percentage shares were based on allocation procedures that had been developed by NMFS in recent years.

The HMS FMP also established a new fishing year for the Atlantic tunas fisheries, beginning June 1 each calendar year and continuing until May 31 of the subsequent calendar year. NMFS specified the 1999 fishing year BFT quota allocations in June 1999, reflecting underharvests or overharvests from the 1998 calendar year, as appropriate for each fishing category (64 FR 29806, June 3, 1999). Subsequently, NMFS made inseason quota adjustments to account for underharvest or overharvest for the period from January 1, 1999, through May 31, 1999; these adjustments were required to make the transition to the new fishing year (64 FR 48111, September 2, 1999).

NMFS then amended the HMS regulations to remove the 250–mt limit on allocating BFT landings quota to the Purse Seine category (64 FR 58793, November 1, 1999). This rulemaking also reinstated the transferability of partial purse seine vessel quota allocations from one vessel to another, which was inadvertently omitted from the consolidated regulations to implement the HMS FMP.

NMFS proposes the fishing year 2000 BFT quota specifications under the annual adjustment procedures of the HMS FMP. Also in accordance with the HMS FMP, NMFS proposes the General category effort control schedule, including time-period subquotas and RFDs, for the upcoming fishing season. After consideration of public comment, NMFS will issue final specifications and publish them in the **Federal Register**.

Domestic Quota Allocation

NMFS proposes fishing category allocations for the 2000 fishing year, beginning June 1, 2000, consistent with the HMS FMP and the 1,387 mt U.S. allocation. The percentage quota shares established in the HMS FMP for fishing years beginning June 1, 1999, as amended by the Purse Seine category adjustment discussed above, are as

follows (tonnage in parentheses corresponds to 1,387 mt total quota): General category -– 47.1 percent (653.3 mt); Harpoon category—3.9 percent (54.1 mt); Purse Seine category—18.6 percent (258.0 mt); Angling category—19.7 percent (273.2 mt); Longline category—8.1 percent (112.3 mt); Trap category—0.1 percent (1.4 mt); and Reserve—2.5 percent (34.7 mt).

The current ICCAT BFT quota recommendation allows, and U.S. regulations require, the addition or subtraction, as appropriate, of any underharvest or overharvest in a fishing year to the appropriate quota category for the following year, provided that such carryover does not result in overharvest of the total annual quota and is consistent with all applicable ICCAT recommendations, including restrictions on landings of school BFT. Therefore, NMFS proposes to adjust the 2000 fishing year quota specifications for the BFT fishery to account for underharvest and overharvest in the 1999 fishing year.

The General, Harpoon, and Purse Seine category fisheries for BFT have been closed for the 1999 fishing year, but landings figures are still preliminary and may be updated before the 2000 specifications are finalized. For the 1999 fishing year, NMFS has preliminarily determined that General category landings exceeded the adjusted General category quota by 50.9 mt; Harpoon category landings exceeded the adjusted Harpoon category quota by 4.9 mt; and Purse Seine category landings were 13.8 mt less than the adjusted Purse Seine category quota. Based on the estimated amount of Reserve that NMFS is maintaining for the landing of BFT taken during ongoing scientific research projects, NMFS estimates that 44.7 mt of Reserve remains unharvested from the 1999 fishing year.

Given estimated catch rates and available quota, the Angling and Longline category fisheries will remain open through May 31, 2000. As NMFS anticipates publication of final BFT quota specifications for the 2000 fishing year prior to the availability of final 1999 landings figures for these two categories, best estimates will be used to determine carryover amounts, if any. To date, the Angling category has the following underharvests for the 1999 fishing year: School BFT—45.8 mt; large school/small medium BFT—145.0 mt; and large medium/giant BFT—1.6 mt. In addition, 17.8 mt remains in the school reserve. To date, 48.8 mt remain in the Longline category. Should adjustments to the final 2000 BFT quota specifications be required based on the final 1999 BFT landings figures, NMFS will publish a **Federal Register** notice updating the 2000 fishing year quota specifications.

NMFS proposes to allocate the remaining 1999 Reserve to the Harpoon and General categories to account for the overharvests in those categories. Of the estimated 44.7 mt carryover from the Reserve, NMFS would allocate 4.9 mt to the Harpoon category and 39.8 mt to the General category. The balance of the 1999 General category overharvest would be deducted from the 2000 General category allocation determined by the percentage share set in the HMS FMP.

In accordance with the regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS proposes specifications for the 2000 fishing year that include carryover adjustments. The proposed quotas are: General category—642.2 mt; Harpoon category—54.1 mt; Purse Seine category—271.8 mt; Angling category—483.4 mt; Longline category—161.1 mt; and Trap category—2.4 mt. Additionally, 34.7 mt would be reserved for inseason allocations or to cover potential overharvest in any category. These initial specifications may be adjusted during the 2000 fishing year, when final Angling category and Longline category landings for the 1999 fishing year are determined. If necessary, updates to the 2000 fishing year specifications for the Angling and Longline categories, including size class and geographic subquota specifications, will be made. As required, adjustments to the amount held in the Reserve will also be made.

Based on the proposed specifications, the Angling category quota of 483.4 mt would be divided as follows: School BFT—136.3 mt, with 72.9 mt to the northern area (north of 38° 47′ N. latitude), 63.4 mt to the southern area (south of 38° 47' N. latitude), and an additional 38.3 mt held in reserve; large school/small medium BFT—300.9 mt, with 163.9 mt to the northern area and 137.0 mt to the southern area; and large medium/giant BFT—7.9, with 3.4 mt to the northern area and 4.5 mt to the southern area. The Longline category quota of 161.1 mt would be subdivided as follows: 30.8 mt to longline vessels landing BFT north of 34° N. latitude and 130.3 mt to longline vessels landing BFT south of 34° N. latitude.

General Category Effort Controls

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the summer and fall. The subquotas are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The HMS FMP divides the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the overharvest of the 1999 fishing year General category quota, these percentages would be applied to the adjusted coastwide quota for the General category of 632.2 mt, with the remaining 10.0 mt being reserved for the New York Bight fishery. Therefore, coastwide, 379.3 mt would be available in the period beginning June 1 and ending August 31; 189.7 mt would be available in the period beginning September 1 and ending September 30; and 63.2 mt would be available in the period beginning October 1.

For the last several years, NMFS has also implemented RFDs in the General category. In 1997, NMFS amended the Atlantic tunas regulations to prohibit persons aboard General category vessels from fishing for (including tag-and-release fishing), retaining, possessing, or landing all sizes of BFT on designated RFDs. The intent of RFDs is to prolong fishing activity within each General category subperiod to increase fishing opportunities and to improve market conditions.

For the 2000 fishing year, NMFS proposes a schedule of RFDs that is similar to that implemented for the 1999 fishing year, adjusted as necessary to coordinate with Japanese market holidays, but that also includes RFDs for the month of October. NMFS has received comment from General category fishermen that NMFS should implement RFDs during October to help lengthen this late season fishery. NMFS proposes RFDs for October intended to balance the interests of various General category fishery participants, and specifically requests comments on these proposed October RFDs.

Persons aboard vessels permitted in the General category would be prohibited from fishing, including tag-and-release, for BFT of all sizes on the following days: July 12, 16, 17, 19, 23, 24, 26, 30, and 31; August 2, 6, 7, 9, 11, 12, 13, 14, 16, 20, 21, 23, 27, 28, and 30; September 3, 4, 6, 10, 11, 13, 17, 18, 20, 24, 25, and 27; and October 1, 4, 6, 7, 10, 11, 14, 15, 18, 19, 22, 23, 26, 27, 30, and 31. These proposed RFDs would improve distribution of fishing opportunities without increasing BFT

mortality and are consistent with the objectives of the HMS FMP.

Changes to Regulatory Text

In consolidating the HMS regulations into one CFR part (64 FR 29090, May 28, 1999), NMFS inadvertently stated certain provisions incorrectly, and included regulatory text that, in some instances, was not consistent with the HMS FMP or the regulatory text as it existed prior to consolidation. Therefore, several changes to the regulatory text are proposed to clarify the regulations and to achieve consistency with the FMP objectives. These changes include specification of fishing seasons, quota adjustments, effort controls, and authorized gear.

General Category Season

Prior to implementation of the HMS FMP in 1999, the Atlantic tunas fishing year coincided with the calendar year, with the General category BFT fishing season ending December 31. The General category quota was split into three time-period subquotas: June through August, the month of September, and October through December. These time-period subquotas were selected as the preferred alternative and final action in the HMS FMP. The FMP established the Atlantic tunas fishing year as June 1 through May 31 of the following year. As specified in the HMS FMP, the change to the new fishing year was not intended to authorize new fishing seasons or to change fishing patterns, but was necessary to accommodate notice and comment rulemaking after management recommendations of ICCAT are received, usually in November. However, the consolidated regulations implementing the HMS FMP erroneously indicated that the third time-period subquota is October 1 through May 31 of the following calendar year, rather than ending December 31 of the same calendar year, as previously specified.

NMFS has stated its intent clearly in the HMS FMP and several other NMFS documents, including the 1999 final BFT quota and effort control specifications and the Atlantic tunas regulations brochure, which indicate an end date of December 31 for the General category season. Specifying May 31 as the end of the third time-period subquota in the consolidated HMS regulations was not intended to establish a new fishing season. NMFS, therefore, proposes to amend the subject regulatory text to indicate December 31 as the end date for the General category BFT fishing season.

Purse Seine Category Season

The HMS regulations state that, from August 15 through December 31, vessels issued Purse Seine category allocations may fish for BFT. The regulations also state that upon reaching its individual allocation of BFT, a Purse Seine category vessel may not participate in a directed fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year. This regulation is necessary because any incidental catch of BFT during fishing operations for other species (*e.g.,* yellowfin or skipjack tunas or herring) must be deducted from the vessel's BFT allocation. In some years, certain purse seine vessels have conducted a yellowfin/skipjack fishery in late spring/early summer prior to commencement of the directed BFT fishery on August 15.

When the HMS regulations were consolidated under 50 CFR part 635, it was inadvertently stated in § 635.27(a)(4)(ii) (Purse Seine category quota section) that the BFT allocation ''becomes available August 15.'' NMFS intended for the August 15 date to refer specifically to the opening of the directed fishery for BFT, not to preclude purse seine fisheries from targeting other species from the beginning of the tunas fishing year (June 1) to August 15 due to lack of a BFT allocation from which to deduct incidental catch. This proposed amendment corrects the subject regulatory text to indicate that the purse seine vessel allocation of BFT is available starting June 1, and that any BFT caught incidental to fishing operations for other species will be deducted from the vessel's BFT allocation for that fishing year. This proposed amendment also clarifies the regulatory text to indicate that it is the directed purse seine fishery for BFT that commences on August 15 each year.

Purse Seine Quota Carryover

Implementing regulations at § 635.27(a)(4)(iii) indicate that, on or about May 1, NMFS will make equal allocations of the available size classes of BFT among Atlantic tunas Purse Seine category permit holders so requesting (limited to five authorized vessels). In situations where a fishing year quota is exceeded or is not entirely taken, regulations at § 635.27(a)(9) state that NMFS shall subtract the overharvest from, or add the underharvest to, the appropriate quota category for the following fishing year. Therefore, in accordance with the regulations, any Purse Seine category underharvest or overharvest would be divided equally among the authorized vessels regardless of the individual vessels' contribution to the carryover amount.

NMFS has received comments from Purse Seine category participants that, because the category is managed via individual vessel quotas (IVQs), any vessel's underharvest or overharvest during a fishing year should be added to or deducted from that vessel's IVQ for the following fishing year, rather than the Purse Seine category quota as a whole. Also, commenters noted that a provision for individual vessel carryover would enhance the intent of the IVQ system by providing individual vessel owners the responsibility and incentive to remain within their allocated quotas, since overharvests would be deducted from that particular vessel's IVQ for the following year, and, conversely, any underharvest would be added.

NMFS, therefore, proposes to amend the regulations regarding annual adjustment of quotas and subquotas to authorize NMFS to add the underharvest to, or subtract the overharvest from, individual Purse Seine category vessels' allocations for the following fishing year if NMFS determines that a vessel's individual quota has been exceeded or has not been reached.

Restricted Fishing Days

For several years, NMFS has implemented RFDs in the BFT General category fishery, along with other General category effort controls. RFDs are consistent with the objectives of the HMS FMP and are designed to address concerns regarding allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to ensure a late season fishery, to improve market conditions, and to improve data collection for scientific monitoring purposes.

Prior to publication of the consolidated regulations implementing the HMS FMP, the Atlantic tunas regulations (50 CFR part 285) indicated that, on RFDs, persons aboard a vessel permitted in the General category could not fish for, possess, or retain BFT. In the final consolidated regulations, the term ''fish for'' was inadvertently omitted. Prohibiting persons on board General category vessels from fishing for BFT on an RFD (including fishing under a tag and release program) is important to facilitate enforcement of the RFD. This proposed amendment would correct the subject regulatory text to indicate that persons on board a vessel permitted in the General category cannot fish for BFT on an RFD.

In addition, this amendment would remove language included in the final consolidated regulations indicating that RFDs apply only when the General category fishery is open. If a time-period subquota is filled and if the fishery is closed before the end of the time period (e.g., by September 15 for the September time period), an automatic waiver of the remaining RFDs for the time period allows for tag-and-release fishing by persons aboard General category vessels until the beginning of the next time period fishery. Removing the provision for automatic waiver of RFDs would allow NMFS the discretion to implement RFDs during a closure of a General category time period on days immediately prior to the beginning of the following time-period subquota (e.g., September 29 and 30).

In issuing a closure notification for any General category subperiod, NMFS would indicate the specific RFDs that would be waived and/or added prior to reopening the fishery. Because fishing for BFT, including tag-and-release fishing, is prohibited on RFDs, retaining or adding RFDs immediately prior to reopening a new sub-period would facilitate enforcement of the closure and reduce the potential for accumulated catch to be landed on the day of the reopening. This proposed amendment is consistent with the intent of RFDs, as well as other General category effort controls and the HMS FMP.

Authorized Gear

Finally, NMFS proposes to correct text that prohibits the use of bandit gear in the north Atlantic swordfish fishery. In the table appearing at 50 CFR 600.725(v), bandit gear is authorized in the swordfish handgear fishery. Likewise, 50 CFR 635.21(d)(4) authorizes the use of bandit gear to fish for north Atlantic swordfish from vessels issued limited access permits. When the final consolidated HMS regulations were published, the prohibition at 50 CFR 635.71(e)(8) inadvertently omitted bandit gear from the list of authorized gears.

Public Hearings and Special Accommodations

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

The public hearing sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Classification

These proposed specifications and regulatory amendment are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq*. Preliminarily, the AA has determined that the specifications and the regulations contained in the proposed regulatory amendment are consistent with the FMP, the Magnuson-Stevens Act, and the 1998 ICCAT recommendation (ICCAT Rebuilding Program).

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulatory amendment, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed specifications would set Atlantic BFT tuna quota allocations and General category effort controls for the 2000 fishing year; these proposed specifications are similar to those set for the 1999 fishing year and are in accordance with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Highly Migratory Species (HMS) FMP). The proposed regulatory amendments would allow Purse Seine vessel owners to carry over unharvested BFT quota between fishing years on a per vessel basis, change the date on which BFT allocations become available to Atlantic tunas Purse Seine category vessel owners, change the end date of the BFT General category season, and modify language regarding restricted fishing days in the General category BFT fishery and authorized gear in the Atlantic swordfish fishery. Because the overall U.S. BFT landings quota and fishing patterns would remain the same, there is no anticipated change in revenues that would accrue to small businesses in the fishery overall. Specifically regarding the Purse Seine category fishery, the ability to carry over unharvested BFT quota between fishing years on a per vessel basis could result in additional revenues accruing to small businesses associated with the purse seine fishery without directly affecting any other fishing category. The other proposed regulatory amendments would serve to correct or clarify the regulatory text and would not alter current fishing practices in any significant way.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed regulatory amendment has been determined to be not significant for purposes of E.O. 12866.

The proposed specifications would set 2000 fishing year BFT fishing category quotas and General category effort controls. The specifications are similar to those set for the 1999 fishing year as established by the HMS FMP. The proposed regulatory amendments would not significantly change the operations of any HMS fishery. Taken together, the quota and effort control specifications and the proposed regulatory amendments are not expected to increase endangered species or marine mammal interaction rates. NMFS reinitiated formal consultation for all Atlantic HMS commercial fisheries on November 19, 1999, under section 7 of the Endangered Species Act. Pending the issuance of a Biological Opinion and the determination of reasonable and prudent measures to avoid jeopardizing the continued existence of any protected species, these proposed measures, if implemented, would not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to reduce adverse impacts on protected resources.

The area in which this proposed action is planned has been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the Highly Migratory Species Division of NMFS. It is not anticipated that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; and 16 U.S.C. 1801 *et seq.*

2. In § 635.23, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued a General category Atlantic Tunas permit may fish for, possess, retain, land, or sell a BFT of any size class, and tag-and-release fishing for BFT under § 635.26 is not authorized from such vessel. On days other than RFDs, and when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

* * * * *

3. In § 635.26, paragraph (a)(1) is revised to read as follows:

§ 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding the other provisions of this part, a person aboard a vessel issued a permit under this part, other than a person aboard a vessel permitted in the General category on a designated restricted fishing day, may fish with rod and reel or handline gear for BFT under a tag and release program, provided the person tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all persons aboard that vessel are ineligible to fish under the tag-and-release program.

* * * * *

4. In § 635.27, paragraph (a)(1)(i)(C), the second sentence of (a)(4)(i), the second sentence of (a)(4)(ii), the first sentence of paragraph (a)(4)(iii), and paragraph (a)(9)(i) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through December 31—10 percent.

* * * * *

(4) * * *

(i) * * * The directed purse seine fishery for BFT commences on August 15 each year.

(ii) * * * The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on June 1.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(9)(i) of this section. * * *

* * * * *

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year.

* * * * *

5. In § 635.71, paragraph (e)(8) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(e) * * *

(8) Fish for North Atlantic swordfish from, possess North Atlantic swordfish on board, or land North Atlantic swordfish from a vessel using or having on board gear other than pelagic longline or handgear.

* * * * *

[FR Doc. 00–13056 Filed 5–19–00; 4:21 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133–0146–02; I.D. 051600B]

RIN 0648–AN52

Atlantic Highly Migratory Species; Trade Restrictions for Bluefin Tuna and Swordfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic highly migratory species (HMS) fisheries to remove a prohibition on the importation of Atlantic bluefin tuna (BFT) from Panama; to prohibit the importation of BFT and its products from Equatorial Guinea; and to prohibit the importation of Atlantic swordfish and its products from Belize and Honduras. These restrictions would implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The intent of these actions is to improve conservation and management of the Atlantic swordfish and bluefin tuna resources, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: NMFS will hold public hearings in June, 2000 to receive comments from fishery participants and other members of the public regarding these proposed regulations. See **SUPPLEMENTARY INFORMATION** for hearing dates and times. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule. To be considered in developing the final rule, written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m. on July 18, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for public hearing locations. Comments on the proposed rule should be sent to and copies of the Draft Environmental Assessment/ Regulatory Impact Review supporting this action may be obtained from Rebecca Lent, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. These documents may be viewed on the NMFS website at www.nmfs.gov/sfa/ hmspg.html. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or on the Internet.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, 301–713–2347; fax: 301–713–1917 or by email at rachel.husted@noaa.gov. The NMFS HMS website is www.nmfs/gov/sfa/ hmspg.html.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery and the BFT fishery are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Proposed Import Restrictions

On August 21, 1997 (62 FR 44422), NMFS prohibited the importation of BFT and its products from Panama, Honduras, and Belize, to implement a 1996 ICCAT recommendation. At that time, vessels of those countries had been determined by ICCAT to be fishing in a manner inconsistent with ICCAT conservation and management measures for bluefin tuna. In recognition of Panama's new status as a Contracting Party and the notable steps that country has taken and is taking to control its fleet and address ICCAT's concerns, ICCAT recommended in 1999 that its members lift the trade ban on bluefin tuna products from Panama. Therefore, consistent with the 1999 ICCAT recommendation, NMFS proposes to lift the import restriction on Panama and allow for the importation of BFT from that country.

In contrast to the efforts of the Government of Panama, information available to ICCAT indicates that Honduras and Belize continue to have vessels fishing in a manner that diminishes the effectiveness of ICCAT's conservation and management measures for both BFT and Atlantic swordfish. (Background on the original BFT determination can be found at 62 FR 44422, August 21, 1997.) In recent years, significant increases in exports of swordfish by Belize and Honduras have been recorded, although no catch data have been reported to ICCAT. This activity is occurring while other countries have reduced their catches of swordfish to comply with ICCAT conservation measures for the overfished north Atlantic swordfish population. ICCAT has repeatedly contacted the governments of Belize and Honduras, but has never received a satisfactory response from either government regarding actions to rectify the situation. Therefore, consistent with the 1999 ICCAT recommendation, NMFS proposes to prohibit the importation of Atlantic swordfish and its products from Honduras and Belize. The prohibition on imports of BFT and its products from these countries would also remain in effect.

In 1999, ICCAT also recommended that its members prohibit the import of BFT from Equatorial Guinea (a Contracting Party to ICCAT). ICCAT took this step as a last resort to address non-compliance with BFT quota limits. Import data from 1997–1999 reveal significant exports of BFT by Equatorial Guinea despite the fact that, for those years, this country received no catch allocation from ICCAT for BFT. The Government of Equatorial Guinea has not responded to repeated correspondence from ICCAT regarding the BFT fishing activities of its vessels and Equatorial Guinea has reported no BFT catch data. Therefore, consistent with the 1999 ICCAT recommendation, NMFS proposes to prohibit the importation of BFT and its products from Equatorial Guinea.

Public Hearings

NMFS will hold public hearings in June 2000 to receive comments from fishery participants and other members of the public regarding these proposed amendments at the following times and locations:

Monday, June 5, 2000—Houma, LA, 7–9:30 p.m.

Holiday Inn Holidome, Houma, LA.

Tuesday, June 6, 2000—Fairhaven, MA, 7–9:30 p.m.

The Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

Thursday, June 8, 2000—Pompano, FL, 7–9:30 p.m.

Pompano Beach Civic Center, 1801 NE 6th Street, Pompano Beach, FL 33060.

Thursday, June 22, 2000—Panama City, FL, 7–9:30 p.m.

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Thursday, June 22, 2000—Barnegat Light, NJ, 7–9:30 p.m. Barnegat Light Firehouse, Barnegat, NJ 08006.

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Husted at (301) 713–2347 at least 5 days prior to the hearing date.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulatory amendment, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

> Implementing trade restrictions on Atlantic BFT and Atlantic swordfish and Atlantic BFT and Atlantic swordfish products from Belize and Honduras, and Atlantic BFT and Atlantic BFT products from Equatorial Guinea would not have a significant economic impact on a substantial number of small entities because these countries currently do not export these fish or fish products to the United states and there are sufficient alternative sources of supply for United States importers and processors. The proposed restrictions would not alter current domestic fishing or marketing practices in any significant way.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The proposed action would not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion will be issued in June 2000. In the interim, no irretrievable commitments of resources are expected from this proposed action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Imports, Treaties.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of BFT or BFT products, or swordfish or swordfish products, in any form, harvested by a vessel under the jurisdiction of Belize or Honduras will be denied entry into the United States.

(b) All shipments of BFT or BFT products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea will be denied entry into the United States.

3. The heading of § 635.46 is revised to read as follows:

§ 635.46 Import requirements for swordfish.

* * * * *

[FR Doc. 00–13057 Filed 5–19–00; 4:21 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133–0133–01; I.D. 120999B]

RIN 0648–AN52

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas; Northern Albacore Tuna Rebuilding

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the Atlantic swordfish fishery to reduce the annual landings quota for the north Atlantic swordfish stock to 2,219 metric tons (mt) dressed weight (dw) for each of the next three fishing years (2000, 2001, 2002), with 300 mt dw allocated for incidental catch and the remainder allocated equally to each of the two semi-annual directed fishery seasons (June 1 through November 30 and December 1 through May 31). NMFS also proposes to establish an allowance for dead discards of 320 mt whole weight (ww) in 2000, 240 mt ww in 2001, and 160 mt ww in 2002. Finally, NMFS requests comments on alternatives to rebuild the stock of northern albacore tuna.

The intent of these actions is to improve conservation and management of the Atlantic swordfish and northern albacore tuna resources, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: NMFS will hold public hearings in June, 2000 to receive comments from fishery participants and other members of the public regarding these proposed regulations. See **SUPPLEMENTARY INFORMATION** for hearing dates and times. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule. To be considered in developing the final rule, written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) by 5 p.m. on July 18, 2000.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for meeting and hearing locations. Comments on the proposed rule and copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) supporting this action may be obtained from Rebecca Lent, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. These documents may be viewed on the NMFS website at www.nmfs.gov/sfa/hmspg.html. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or on the Internet.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, 301–713–2347; fax: 301–713–1917 or by email at rachel.husted@noaa.gov. The NMFS website is www.nmfs/gov/sfa/hmspg.html.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Swordfish Rebuilding Program

The total weight of the north Atlantic swordfish stock at the beginning of 1999, according to the 1999 ICCAT stock assessment, was estimated to be at 65 percent of that needed to produce maximum sustainable yield (MSY). The biomass at MSY is the target stock size of the rebuilding program for north Atlantic swordfish. The 1998 fishing mortality rate was estimated to be 1.34 times F_{MSY}. Because NMFS is committed to rebuilding north Atlantic swordfish, consistent with the recent ICCAT program, reductions in quotas are required in the immediate future to rebuild the stock to levels that would support MSY.

North Atlantic swordfish landings for all nations combined for 1998 were estimated to be 12,175 mt ww. At the November 1999 ICCAT meeting, a recommendation was adopted to establish a rebuilding program for north Atlantic swordfish and to reduce the total allowable catch for all countries fishing on that stock to 10,600 mt ww (7,970 mt dw) for 2000, 10,500 mt ww (7,895 mt dw) for 2001, and 10,400 mt ww (7,820 mt dw) for 2002. Although the ICCAT recommendation specifies the quota in whole weight, this document refers to the quota in dressed

weight (dw = 0.7519 ww) for the purposes of monitoring U.S. harvests, as swordfish are processed at sea and landed in dressed form (head, fins, viscera and tails removed). This proposed rule implements the ICCAT recommendations for rebuilding north Atlantic swordfish.

Under the ICCAT recommendation, the United States is allocated 29 percent of the North Atlantic swordfish landings quota for major harvesting nations (total allowable catch minus the total dead discard allowance) in 2000, 2001, and 2002. This amounts to 2951 mt ww for each year and represents a 5-percent decrease from the U.S. landings quota recommended by ICCAT for 1998. Under the proposed rule, and consistent with the FMP, each year, the quota would be divided between a directed fishery quota and an incidental quota (1919 mt dw directed, 300 mt dw incidental). Consistent with the FMP, the directed fishery quota of 1919 mt dw would be divided into two semi-annual quotas: June 1–November 30 and December 1–May 31 (959.5 mt dw for each season). The incidental quota is needed to allow for incidental landings, at levels stated in 50 CFR 635.27, during possible directed fishery closures and for swordfish taken incidental to other fisheries such as the highly migratory species recreational fishery or the pelagic longline fishery for tunas (by incidental swordfish permit holders).

In addition to the landings quota, ICCAT allocated to the United States 80 percent of the dead discard allowance (i.e., the U.S. share is 320 mt ww in 2000, 240 mt ww in 2001, and 160 mt ww in 2002). The dead discard allowance would be phased out by 2004. The United States would deduct any amount over its dead discard allowance from the U.S. landings quota in the following year. If the United States discards less than its share of the dead discard allowance, the remainder would be added to the total quota available for all fishing nations in subsequent years, and would be reallocated by ICCAT.

In 1998, the United States reported discarding 433 mt ww of dead swordfish in the North Atlantic Ocean. Assuming dead discards occur in proportion to landings, dead discards in 2000 might decrease to 411 mt ww commensurate with the decrease in landings quota (i.e., 5 percent less than 433 mt reported for 1998). This would result in an expected overharvest of the 2000 dead discard allowance by 91 mt ww. If discard rates remain proportional to the adjusted quota in 2001 and 2002, the dead discard allowance would be exceeded by 158 and 230 mt ww, respectively. These overages would require further reductions in the landings quotas and, combined with the initial quota reduction recommended by ICCAT (5 percent), might result in an actual decrease in landings of up to 10 percent by 2002 if the rate of discarding is not reduced (refer to the EA/RIR/IRFA for more details). However, NMFS has published a proposed rule that is designed to reduce dead discards, which should minimize the effects of the phase-out of the dead discard allowance.

The proposed regulatory changes in this rule would further ICCAT's international management objectives for the Atlantic swordfish fishery. NMFS has evaluated the proposed annual quota and the dead discard allowance in accordance with the procedures and factors specified in 50 CFR 635.27(c)(3), and has determined that the proposed measures are consistent with the latest stock assessment and recommendations of ICCAT.

Northern Albacore Rebuilding

In the October 1999 Report to Congress on the Status of U.S. Fisheries, NMFS identified the northern albacore tuna stock as overfished. Alternatives for developing a rebuilding plan for northern albacore are discussed in the EA/RIR/IRFA prepared for this proposed rule. The alternatives considered included no action, a ten-year international rebuilding program negotiated through ICCAT, and a unilateral U.S. action plan. NMFS requests comment on the albacore rebuilding alternatives.

Other ICCAT Issues

ICCAT adopted a number of other recommendations and resolutions at the 1999 meeting that will not require rulemaking but will require management action on the part of NMFS. These include a recommendation reiterating the limitation on fishing capacity of commercial vessels fishing for northern albacore, and a recommendation calling for the United States to endeavor to limit its total catch of southern albacore to no more than 4 percent by weight of its total catch of south Atlantic swordfish. Several other recommendations include provisions that request Contracting Parties to provide catch data or information related to vessel registration. ICCAT also adopted a non-binding resolution encouraging all parties to participate actively in efforts to combat illegal, unregulated and unreported fishing. NMFS intends to implement these measures through actions outside of the regulatory process and to provide ICCAT with all possible information that has been requested by the Commission.

Summary

NMFS proposes to implement ICCAT's 1999 recommendation of a North Atlantic swordfish U.S. quota of 2,219 mt dw for each year 2000, 2001, and 2002. The U.S. landings quota will remain constant for 2000, 2001, and 2002, but it is subject to adjustment between years (consistent with ICCAT recommendations) if the directed or incidental quota, or the dead discard allowance are exceeded or are not reached.

Consistent with the FMP, the directed fishery quota of 1919 mt dw would be divided into two semi-annual quotas: June 1—November 30 and December 1–May 31 (959.5 mt dw for each season). Following a closure of the directed longline fishery, any overharvest or underharvest would be added to, or subtracted from, the incidental quota of 300 mt dw for that year. Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, consistent with the ICCAT recommendations.

A dead discard allowance would be established. Any discards in excess of the dead discard allowance would be subtracted from the directed quota for the following year.

Public Hearings

NMFS will hold public hearings in June 2000 to receive comments from fishery participants and other members of the public regarding these proposed amendments at the following times and locations:

Monday, June 5, 2000—Houma, LA, 7–9:30 p.m.

Holiday Inn Holidome, Houma, LA.

Tuesday, June 6, 2000—Fairhaven, MA, 7–9:30 p.m.

The Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

Thursday, June 8, 2000—Pompano, FL, 7–9:30 p.m.

Pompano Beach Civic Center, 1801 NE 6th Street, Pompano Beach, FL 33060.

Thursday, June 22, 2000—Panama City, FL, 7–9:30 p.m.

National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Thursday, June 22, 2000—Barnegat Light, NJ, 7–9:30 p.m. Barnegat Light Firehouse, Barnegat, NJ 08006.

Special Accommodations

These hearings will be physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Husted at (301) 713–2347 at least 5 days prior to the hearing date.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA) has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared an IRFA for this proposed rule. A summary of the IRFA follows (see **ADDRESSES** for a copy of the IRFA):

The IRFA assumes that the population of small entities that would be affected by the rule are those fishermen issued limited access permits for swordfish. As of December 31, 1999, there were 450 directed and incidental swordfish permit holders and 118 swordfish handgear permit holders. The proposed quota reductions and implementation of the dead discard allowance would, in the short term, reduce ex-vessel swordfish revenues for a substantial portion of the swordfish fleet.

Assuming the lower quotas would result in equal reductions in swordfish catch for all vessels, the majority of the fleet would experience declines in revenue of between 1 and 4 percent by 2001. By 2002, about 78 percent of vessels would experience declines in gross revenues of between 1 and 4 percent, and about 30 percent of the fleet would experience revenue decreases of 5 percent or more. Several more vessels would be affected, and to a greater degree, if dead discards exceed the allowance, thereby making further reductions to the landings quota necessary. However, even without compensatory actions by vessel operators (e.g., increased yellowfin tuna fishing), no vessels are expected to experience revenue declines of 10 percent or more. To the extent that swordfish dead discards can be reduced and vessels can switch to tuna fishing, the projected revenue declines may be overestimated. Additionally, a current decrease in swordfish mortality is expected to contribute to stock rebuilding within a 10-year time frame. Thus, negative short-term impacts would yield revenue gains in the long run.

No mitigating measures specific to small businesses are considered feasible. Not implementing the quota reductions and the dead discard allowance at this time would maintain current catch levels only in the short term. Eventually, further decline in swordfish abundance would increase fishing costs (lower catch per unit effort/increased discards) and decrease revenues (lower total swordfish catch); thus, greater economic impacts would likely result from maintaining the status quo.

The other alternatives considered include only the status quo for the landings quota and not accounting for dead discards. No other alternatives were considered, because NMFS is required under ATCA to implement ICCAT recommendations upon acceptance by the United States. Although the status quo might have lesser short-term economic impacts on participants in the swordfish fishery, those alternatives do not support the rebuilding plan established by the FMP for Atlantic Tunas, Swordfish, and Sharks. The IRFA provides further discussion of the economic effects of the alternatives considered.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The proposed action would not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BO) will be issued in May 2000. The existing BO, dated May 29, 1999 concludes that continued operation of the longline component of the swordfish fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. A reduced landings quota could result in decreased fishing effort targeting swordfish, primarily by pelagic longline vessels. Depending on where and how that displaced effort shifts to other fisheries, interactions with protected species may be reduced. No irretrievable commitments of resources are expected from the proposed action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Treaties.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(3)(i) are revised, and paragraphs (c)(1)(i)(C) and (c)(3)(iii) are added to read as follows:

§ 635.27 Quotas.

* * * * *

(c) *Swordfish.* (1) * * *

(i) *North Atlantic swordfish stock.* (A) The directed fishery quota for the North Atlantic swordfish stock is 1919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

* * * * *

(C) The dead discard allowance for the north Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning May 1, 2001. All swordfish discarded dead, regardless of whether discarded from vessels permitted under this part, shall be counted against the allowance.

* * * * *

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

* * * * *

(iii) The dressed weight equivalent of the amount of dead discards exceeding the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph.

[FR Doc. 00–13058 Filed 5–19–00; 4:21 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 101
Wednesday, May 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development, One Hundred and Thirty Second Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty second meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 4:00 p.m. on June 8th, 2000, and from 9 a.m. to 12:40 p.m. on June 9th, 2000, in the Hemisphere A room in the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC.

As part of its agenda, BIFAD will look at the coming crisis in water and its implications for agriculture. BIFAD will also examine the food security crisis in the Horn of Africa, its political and agroclimatic underpinnings, food aid, post crisis development, and medium-term climate prediction. BIFAD will also hear about building new coalitions for foreign aid.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Charles Uphaus, the Acting Designated Federal Officer for BIFAD. He can be reached at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–01. Washington DC, 20523–2110, by telephone at (202) 712–1172, by fax (202) 216–3060, or by e-mail at cuphaus@usaid.gov.

Charles Uphaus,

USAID Acting Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs.

[FR Doc. 00–12999 Filed 5–23–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–380, Worksheet for Food Stamp Program Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the FNS–380, Worksheet for Food Stamp Program Quality Control Reviews.

DATES: Written comments must be submitted on or before July 24, 2000.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha Oliver, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Worksheet for Food Stamp Program Quality Control Reviews.

OMB Number: 0584–0074.

Form Number: FNS–380.

Expiration Date: January 31, 2003.

Type of Request: Revision of a currently approved collection.

Abstract: The Food Stamp Act of 1977, as amended, (''the Act'') requires a measurement system that provides for State agencies to share in the costs of high error rates. Section 16 of the Act provides the legislative basis for the operation of the quality control (QC) system. Part 275, Subpart C of the Food Stamp Program (FSP) regulations provides the regulatory requirements for QC reporting. The Form FNS–380 is a worksheet used in the FSP to determine eligibility and benefits for households selected for review in the QC sample of active cases.

Burden Estimate: The reporting and record keeping burden for the Form FNS–380 includes the time for analyzing the household case record; planning and carrying out the field investigation; gathering, comparing, analyzing and evaluating the review data and filing any documents. The Office of Management and Budget (OMB) approved the burden for Form FNS–380 through January 31, 2003, under OMB number 0584–0074. An automated version of Form FNS–380, which will be optional for States to use, is scheduled to be completed October 1, 2000. The format and information gathered by the automated version of Form FNS–380 will be the same as the paper version of this form; therefore, there will be only a minimal difference in the burden for the electronic version from that of the paper version. We are requesting a three-year approval from OMB of the paper and automated versions of Form FNS–380.

Affected Public: Individuals or households; State or local governments.

Estimated Number of State Respondents: 53 State agencies.

Estimated Number of Affected Households: 54,663 households.

Estimated Total Number of Responses Per Year: 54,663 responses.

Estimated Time per Response for Information Collection: 9 hours.

Total Annual Burden: 491,967 hours.

Dated: May 14, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–13017 Filed 5–23–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Salt Lake City, Utah, June 22–24, 2000. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held June 22–24, 2000.

ADDRESSES: The meeting will be held at the Little America Hotel & Towers, 500 South Main Street, Salt Lake City, Utah. A tour of local projects will be held on June 22 from 9 a.m. to 2 p.m.

Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The Challenge Cost-Share Grant categories, identified by the Council, are advertised annually to solicit proposals for projects to advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8:30 a.m. to 10:30 a.m. on June 24 in order for the Council to determine the categories for the 2001 Challenge Cost-Share grant program. Otherwise, the meeting is open to the public.

Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 9 will have the opportunity to address the Council at those sessions. Council discussion is limited to Forest Service staff and Council members.

Dated: May 15, 2000.

Dan Glickman,

Secretary.

[FR Doc. 00–13073 Filed 5–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 051900A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0271.

Type of Request: Extension of currently approved collection.

Burden Hours: 1,705.

Number of Respondents: 86.

Average Hours Per Response: 13 minutes per day for logbooks from catcher and mothership vessels, 26 minutes per day for catcher-processor vessels, 30 minutes or 4.3 minutes per day for a weekly/daily production report, 20 minutes for a product transfer/offloading logbook, and 1.25 minutes for a start/stop notification.

Needs and Uses: The information is needed for the management of the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone off the states of Washington, Oregon, and California. NOAA had proposed a regulation that would require logbooks and other reports from vessels participating in this fishery. Currently the vessels are asked to voluntarily submit much of the information. The information is used to monitor the status of the fishery.

Affected Public: Business and other for-profit institutions.

Frequency: Daily, weekly, quarterly, and on occasion (prior to certain events).

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 18, 2000.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13080 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

May 18, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70222, published on December 16, 1999.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 18, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 24, 2000, you are directed to reduce the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338	437,003 dozen.
339	1,810,088 dozen.
340	424,078 dozen.
341	272,561 dozen.
347/348/847	1,011,466 dozen.
351/851	94,415 dozen.
638/639/838	2,221,340 dozen.
647/648	738,104 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–12995 Filed 5–23–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of revised system of records, CFTC–35, Interoffice and Internet E-Mail.

SUMMARY: This notice revises CFTC–35, the Commission's systems of records under the Privacy Act of interoffice and Internet e-mail. The revisions reflect the changes in the maintenance of e-mail records brought about by a change in the agency's computer network. The changes are technical in nature and do not significantly affect the privacy expectations of the individuals on whom records are retrievable.

DATES: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Office of the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, syochum@cftc.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 522a, and the Commission's implementing regulations, 17 CFR part 146, the Commission is publishing revisions to its system of records, CFTC–35, Interoffice and Internet E-Mail. The Commission's recent change in operating networks affected the location of the records and the categories of records in the systems, as well as the storage, safeguards, and retention and disposal of the records.

Accordingly, the Commission is giving notice of the following revisions to CFTC–35:

CFTC–35

SYSTEM NAME:

Interoffice and Internet E-Mail

SYSTEM LOCATION:

Mail servers in each system location (Washington, DC, Chicago, New York, and Los Angeles) retain records. Records are backed up nightly onto magnetic tape in all locations. In Washington, DC, the most recent two weeks of tapes are kept in locked boxes and tapes with information covering the prior two weeks are kept at an off-site storage facility. Tapes with information covering the most recent four-week period are kept on-site, in a secured area, in the Chicago, New York and Los Angeles locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on-site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the use of the interoffice and Internet e-mail system, including the mailbox name, number of objects in the mailbox, and aggregate size of the mailbox.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

The records are used by CFTC network administrators who have a need for the records in the performance of their duties. See also the Commission's ''General Statement of Routine Uses,'' Nos. 1, and 2, Privacy Act Issuances, 1991 Comp., Vol. IV, p. 144. In addition, the records and data, other than the content of individual mailboxes, may also be disclosed as necessary to contractors as necessary for assessment, modification, or maintenance of the e-mail system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are stored on the mail servers in each CFTC location. Servers are backed up nightly to magnetic tape. In Washington, DC, the most recent two weeks of magnetic tape are kept in a locked box in the Computer Room and the prior two weeks are kept at an off-site storage facility. The entire four weeks of magnetic tape information is kept in unlocked boxes in a secured area in the Chicago, New York and Los Angeles locations.

RETRIEVABILITY:

The information can be retrieved by assigned interoffice or Internet mail address.

SAFEGUARDS:

Network administrators have access to the e-mail information. This access is generally limited to the ''header'' information described under ''Categories of Records.'' In addition, the mailbox owner can grant access to objects in the mailbox to others. The tapes are kept in locked storage boxes in Washington, DC, and only network administrators and OIRM management have keys to the locked boxes. In the Chicago, New York and Los Angeles locations, tapes are kept in a secured area. Only designated office personnel have access to the secured area.

RETENTION AND DISPOSAL:

Records on magnetic tape are retained for four weeks, then destroyed as the tape is written over with new information. Records are retained on the mail servers until the sender and receiver delete the information from the e-mail system. Internet e-mail information that is received by the postmaster due to an error in delivery is considered temporary and is destroyed after the problem is corrected. When an employee leaves the Commission, the employee's mailbox is deleted unless the employee or the employee's administrative officer requests that the mailbox be retained in order to recover work-related information.

SYSTEM MANAGER AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCESS:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Internet e-mail, interoffice e-mail.

Issued in Washington, DC, on May 17, 2000.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–12920 Filed 5–23–00; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Rule Declaring Natural Rubber Latex a Strong Sensitizer; Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commission is extending its comment period to receive information concerning a petition asking the Commission to declare natural rubber latex a strong sensitizer under the Federal Hazardous Substances Act (''FHSA''). In response to seven requests, the Commission is extending the comment period to allow submission of comments 30 days after the original comment period of May 22, 2000.

DATES: The Office of the Secretary should receive comments on the petition by June 21, 2000.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned ''Petition HP 00–2, Petition on Natural Rubber Latex.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the substance of the petition call or write to Suzanne Barone, Ph.D., Directorate for Health Sciences, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, extension 1196. For information about submitting comments call or write to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: On March 21, 2000, the Commission published a notice announcing that it has docketed a petition asking that the Commission declare natural rubber latex (''NRL'') a strong sensitizer and requesting comments on the petition. 65 FR 15133. The petitioner, Debi Adkins, editor of Latex Allergy News, asserts that a portion of the population is allergic to NRL and can become seriously ill after contact with consumer products that contain NRL. The March 21 **Federal Register** notice provided for a 60-day comment period to end May 22, 2000. The Commission has received seven requests to extend the comment period. Four letters requested a 30-day extension, two letters requested 60 days, and another asked for 90 days. After considering these requests, the Commission has decided to extend the comment period 30 days until June 21, 2000.[1]

The Commission will consider the comments received on the petition, as well as information presented by the staff, and will decide whether to grant or deny the petition. Should the Commission decide to grant the petition and begin a rulemaking proceeding, there would be another opportunity for the public to comment before the Commission could issue a rule declaring NRL a strong sensitizer.

Dated: May 18, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–12994 Filed 5–23–00; 8:45 am]

BILLING CODE 6355–01–P

[1] Chairman Ann Brown and Commissioner Mary Gall voted to extend the comment period 30 days. Commissioner Thomas Moore voted for a 60-day extension.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its AmeriCorps National Referral Card (OMB Control Number 3045–0004, with an expiration date of 8/31/2000). Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by July 24, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Noel McCaman, Director, AmeriCorps Recruitment Office, 1201 New York Avenue, NW., Suite 8711, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Noel McCaman, (202) 606–5000, ext. 443, or by e-mail at NMccaman@cns.gov.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency?s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background

The AmeriCorps National Referral Card is submitted by potential AmeriCorps members to the Corporation for National Service for input into a national recruitment referral database and the information provided is distributed to approved AmeriCorps programs. The programs then contact individuals who have completed the form and ask them to formally apply for AmeriCorps member positions.

Current Action

The Corporation seeks to revise the current AmeriCorps National Referral Card in order to determine:

(1) Citizenship or if applicant is a lawful permanent resident alien of the United States (a statutory requirement for participation in AmeriCorps);

(2) Knowledge of foreign languages. (The current card asks only about Spanish language skills);

(3) If the individual is interested in serving in a summer program; and

(4) The geographic area(s) in which the individual would prefer to serve.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps National Referral Card.

OMB Number: 3045–0004.

Agency Number: None.

Affected Public: Individuals and households.

Total Respondents: 100,000 (50,000 through the Corporation's 1–800 number, and 50,000 through the Corporation's website).

Frequency: One response per individual (optional collection).

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 5,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $42,900—(1–800 number costs and $0.00 for the website).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 19, 2000.

Noel V. McCaman,

Director of AmeriCorps Recruitment, Corporation for National and Community Service.

[FR Doc. 00–13082 Filed 5–23–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, VA 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

The following patents and patent applications are available for licensing:

Patent 5,926,507: QUOTIENT CODING MODEM; filed 8 July 1997; patented 20 July 1999.//

Patent 5,951,757: METHOD FOR MAKING SILICON GERMANIUM ALLOY AND ELECTRIC DEVICE STRUCTURES; filed 6 May 1997; patented 14 September 1999.//

Patent 5,960,732: LINE CHARGE DEPLOYMENT APPARATUS; filed 19 December 1997; patented 5 October 1999.//

Patent 5,961,661: CERAMIC STRUCTURE WITH BACKFILLED CHANNELS; filed 16 September 1998; patented 5 October 1999.//Patent 5,961,895: MULTI-STAGE-SYSTEM FOR MICROBUBBLE PRODUCTION; filed 19 June 1997; patented 5 October 1999.//

Patent 5,963,169: MULTIPLE TUBE PLASMA ANTENNA; filed 29 September 1997; patented 5 October 1999.//Patent 5,963,591: SYSTEM AND METHOD FOR STOCHASTIC CHARACTERIZATION OF A SIGNAL WITH FOUR EMBEDDED ORTHOGONAL MEASUREMENT DATA ITEMS; filed 13 September 1996; patented 5 October 1999.// Patent 5,963,887: APPARATUS FOR OPTIMIZING THE ROTATIONAL SPEED OF COOLING FANS; filed 12 November 1996; patented 5 October 1999.//

Patent 5,964,018: BELT REPAIR SYSTEM AND METHOD; filed 15 August 1997; patented 12 October 1999.//Patent 5,964,175: CONFORMAL DETACHABLE PLATFORM ARRAY; filed 25 September 1997; patented 12 October 1999.//

Patent 5,965,199: CORROSION-RESISTANT COATING PREPARED BY THE THERMAL DECOMPOSITION OF LITHIUM PERMANGANATE; filed 29 September 1997; patented 12 October 1999.//Patent 5,965,268: CARBON-BASED COMPOSITES DERIVED FROM PHTHALONITRILE RESINS; filed 26 June 1998; patented 12 October 1999.//

Patent 5,966,414: SYSTEM AND METHOD FOR PROCESSING SIGNALS TO DETERMINE THEIR STOCHASTIC PROPERTIES; filed 28 March 1995; patented 12 October 1999.//Patent 5,966,858: BAFFLED MUZZLE BRAKE AND SEAL SYSTEM FOR SUBMERGED GUN OPERATION; filed 23 March 1998; patented 19 October 1999.//

Patent 5,967,012: WASTE AEROSOL CONTAINER PROCESSOR; filed 19 November 1996; patented 19 October 1999.//

Patent 5,969,072: SILYL AND SILOXYL SUBSTITUTED CARBORANES WITH UNSATURATED ORGANIC END GROUPS; filed 27 February 1998; patented 19 October 1999.//Patent 5,969,244: SWITCH ASSEMBLY FOR WITHSTANDING SHOCK AND VIBRATION; filed 13 April 1998; patented 19 October 1999.//Patent 5,969,429: BREATHING APPARATUS HAVING ELECTRICAL POWER SUPPLY ARRANGEMENT WITH TURBINE-GENERATOR ASSEMBLY; filed 15 August 1997; patented 19 October 1999.//Patent 5,969,581: OPTO-ELECTRONICALLY CONTROLLED RF WAVEGUIDE; filed 28 May 1998; patented 19 October 1999.//Patent 5,969,608: MAGNETO-

INDUCTIVE SEISMIC FENCE; filed 23 February 1998; patented 19 October 1999.//Patent 5,969,978: READ/WRITE MEMORY ARCHITECTURE EMPLOYING CLOSED RING ELEMENTS; filed 30 September 1998; patented 19 October 1999.//

Patent 5,970,779: SYSTEM AND METHOD FOR CALIBRATING ACCELEROMETER OVER LOW(OCEAN WAVE) FREQUENCIES; filed 15 September 1997; patented 26 October 1999.//Patent 5,970,899: DIAGONAL HATCH SYSTEM FOR SHIPS; filed 14 August 1997; patented 26 October 1999.//

Patent 5,972,136: LIQUID PROPELLANT; filed 9 May 1997; patented 26 October 1999.//Patent 5,972,714: ATMOSPHERIC OZONE CONCENTRATION DETECTOR; filed 29 March 1996; patented 26 October 1999.//

Patent 5,973,051: MASS LOADED COATING AND METHOD FOR REDUCING THE RESONANT FREQUENCY OF A CERAMIC DISC; filed 27 September 1993; patented 26 October 1999.//Patent 5,973,653: INLINE COAXIAL BALUN-FED ULTRAWIDEBAND CORNU FLAREDORN ANTENNA; filed 31 July 1997; patented 26 October 1999. //Patent 5,973,824: AMPLIFICATION BY MEANS OF DYSPROSIUM DOPED LOW PHONON ENERGY GLASS WAVEGUIDES; filed 29 August 1997; patented 26 October 1999.//Patent 5,973,994: SURFACE LAUNCHED SONOBUOY; filed 20 April 1998; patented 26 October 1999.//

Patent 5,975,942: MECHANICAL STRAIN RELIEF; filed 19 September 1997; patented 2 November 1999.//

Patent 5,976,444: NANOCHANNEL GLASS REPLICA MEMBRANES; filed 24 September 1996; patented 2 November 1999.//

Patent 5,977,918: EXTENDIBLE PLANAR PHASED ARRAY MAST; filed 25 September 1997; patented 2 November 1999.//

Patent 5,978,646: METHOD AND APPARATUS FOR SIMULATING A LOFARGRAM IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 2 November 1999.//Patent 5,978,647: METHOD AND APPARATUS FOR SIMULATING AUTOCORRELATION COEFFICIENTS IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 2 November 1999.//Patent 5,978,834: PLATFORM INDEPENDENT COMPUTER INTERFACE SOFTWARE RESPONSIVE TO SCRIPTED COMMANDS; filed 30 September 1997; patented 2 November 1999.//

Patent 5,980,853: AROMATIC ACETYLENES AS CARBON PRECURSORS; filed 8 October 1998; patented 9 November 1999.//

Patent 5,981,297: BIOSENSOR USING MAGNETICALLY-DETECTED LABEL; filed 5 February 1997; patented 9 November 1999.//Patent 5,981,678: POLYMER PRECURSOR COMPOSITION, CROSSLINKED POLYMERS, THERMOSETS AND CERAMICS MADE WITH SILYL AND SILOXYL SUBSTITUTED CARBORANES WITH UNSATURATED ORGANIC END GROUPS; filed 27 February 1998; patented 9 November 1999.//

Patent 5,982,420: AUTOTRACKING DEVICE DESIGNATING A TARGET; filed 21 January 1997; patented 9 November 1999.//

Patent 5,983,067: METHOD AND APPARATUS FOR SIMULATING CROSS-CORRELATION COEFFICIENTS IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 9 November 1999.//Patent 5,983,821: MULTILINE TOW CABLE ASSEMBLY INCLUDING SWIVEL AND SLIP RING; filed 12 August 1998; patented 16 November 1999.//

Patent 5,985,173: PHOSPHORS HAVING A SEMICONDUCTOR HOST SURROUNDED BY A SHELL; filed 18 November 1997; patented 16 November 1999.//Patent 5,985,523: METHOD FOR IRRADIATING PATTERNS IN OPTICAL WAVEGUIDES CONTAINING RADIATION SENSITIVE CONSTITUENTS; filed 9 September 1996; patented 16 November 1999.//

Patent 5,986,032: LINEAR METALLOCENE POLYMERS CONTAINING ACETYLENIC AND INORGANIC UNITS AND THERMOSETS AND CERAMICS THEREFROM; filed 14 March 1997; patented 16 November 1999.//Patent 5,986,757: CORRECTION OF SPECTRAL INTERFERENCES ARISING FROM CN EMISSION IN CONTINUOUS AIR MONITORING USING INDUCTIVELY COUPLED PLASMA ATOMIC EMISSION SPECTROSCOPY; filed 17 September 1997; patented 16 November 1999.// Patent 5,986,784: ADAPTIVE POLARIZATION DIVERSITY DETECTION SCHEME FOR COHERENT COMMUNICATIONS AND INTERFEROMETRIC FIBER SENSORS; filed 12 December 1994; patented 16 November 1999.//

Patent 5,987,362: FINAL APPROACH TRAJECTORY CONTROL WITH FUZZY CONTROLLER; filed 6 October 1997; patented 16 November 1999.//Patent 5,987,397: NEURAL NETWORK SYSTEM FOR ESTIMATION OF HELICOPTER GROSS WEIGHT AND CENTER OF GRAVITY LOCATION; filed 13 March 1998; patented 23 November 1999.// Patent 5,987,962: COPPER CRUSHER GAUGE HOLDER; filed 15 September 1997; patented 23 November 1999.//

Patent 5,989,087: LIDAR DETECTION USING SHADOW ENHANCEMENT; filed 18 March 1998; patented 23 November 1999.//

Patent 5,990,679: METHOD USING CORRECTIVE FACTORS FOR DETERMINING A MAGNETIC GRADIENT; filed 22 October 1997; patented 23 November 1999.//Patent 5,990,829: SPINNING FOCAL PLANE ARRAY CAMERA PARTICULARLY SUITED FOR REAL TIME PATTERN RECOGNITION; filed 3 July 1998; patented 23 November 1999.//

Patent 5,991,036: TWO-DIMENSIONAL OPTO-ELECTRONIC IMAGER FOR MILLIMETER AND MICROWAVE ELECTRO-MAGNETIC RADIATION; filed 30 September 1997; patented 23 November 1999.//Patent 5,991,537: VXI TEST EXECUTIVE; filed 16 September 1997; patented 23 November 1999.//Patent 5,991,815: METHOD OF SUPPLYING MULTIPLE LOADS FROM MULTIPLE SOURCES OVER AN INTERCONNECTED NETWORK OF DEFINED PATHS; filed 19 June 1997; patented 23 November 1999.//Patent 5,991,829: METHOD OF SENSING TARGET STATUS IN A LOCAL AREA NETWORK; filed 29 March 1994; patented 23 November 1999.//

Patent 5,992,077: NOSE CONE AND METHOD FOR ACOUSTICALLY SHIELDING AN UNDERWATER VEHICLE SONAR ARRAY; filed 18 March 1998; patented 30 November 1999.//Patent 5,992,226: APPARATUS AND METHOD FOR MEASURING INTERMOLECULAR INTERACTIONS BY ATOMIC FORCE MICROSCOPY; filed 8 May 1998; patented 30 November 1999.//Patent 5,992,584: DASHPOT FOR POWER CYLINDER; filed 26 March 1996; patented 30 November 1999.//

Patent 5,994,610: METHOD OF SUPPRESSING THERMITE REACTIONS IN PLASMA ARC WASTE DESTRUCTION SYSTEM; filed 8 May 1998; patented 30 November 1999.//Patent 5,994,884: BOOSTER CIRCUIT FOR FOLDBACK CURRENT LIMITED POWER SUPPLIES; filed 27 August 1998; patented 30 November 1999.//

Patent 5,995,803: METHOD AND APPARATUS FOR SIMULATING A

MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 30 November 1999.//

Patent 5,996,401: LEAK TEST ADAPTER SYSTEM; filed 27 August 1998; patented 7 December 1999.// Patent 5,996,503: REUSABLE GAS-POWERED HAND GRENADE; filed 27 April 1998; patented 7 December 1999.//Patent 5,996,525: BELLMOUTH EXIT ANGLE ADAPTER; filed 6 July 1998; patented 7 December 1999.//Patent 5,996,630: SYSTEM FOR SUPPRESSING CAVITATION IN A HYDRAULIC COMPONENT; filed 18 March 1998; patented 7 December 1999.//

Patent 5,997,138: DIVER'S FACE MASK HAVING ASPHERIC, AFOCAL LENS SYSTEM PROVIDING UNIT MAGNIFICATION FOR USE AS A WINDOW BETWEEN AIR AND WATER; filed 20 July 1998; patented 7 December 1999.//

Patent 5,998,874: ULTRAHIGH DENSITY CHARGE TRANSFER DEVICE; filed 13 October 1994; patented 7 December 1999.//

Patent 5,999,212: METHOD AND APPARATUS FOR INFRARED DETECTION OF A MOVING TARGET IN THE PRESENCE OF SOLAR CLUTTER; filed 31 July 1997; patented 7 December 1999.//Patent 5,999,292: SAGNAC INTERFEROMETER AMPLITUDE MODULATOR BASED DEMULTIPLEXER; filed 20 February 1998; patented 7 December 1999.// Patent 5,999,893: CLASSIFICATION SYSTEM AND METHOD USING COMBINED INFORMATION TESTING; filed 2 May 1997; patented 7 December 1999.//

Patent 6,000,851: ADJUSTABLE ELECTRIC MOTOR BEARING SYSTEM; filed 10 December 1997; patented 14 December 1999.//

Patent 6,001,237: ELECTROCHEMICAL FABRICATION OF CAPACITORS; filed 2 December 1997; patented 14 December 1999.//Patent 6,001,587: CHEMICALLY SPECIFIC PATTERNING ON SOLID SURFACES USING SURFACE IMMOBILIZED ENZYMES; filed 8 April 1997; patented 14 December 1999.//Patent 6,001,715: NON-THERMAL PROCESS FOR ANNEALING CRYSTALLINE MATERIALS; filed 26 June 1996; patented 14 December 1999.//Patent 6,001,926: FIBER-REINFORCED PHTHALONITRILE COMPOSITE CURED WITH LOW-REACTIVITY AROMATIC AMINE CURING AGENT; filed 2 October 1997; patented 14 December 1999.//

Patent 6,002,649: TAPERED CYLINDER ELECTRO-ACOUSTIC TRANSDUCER WITH REVERSED TAPERED DRIVER; filed 16 September 1997; patented 14 December 1999.//Patent 6,002,914: METHOD AND APPARATUS FOR SIMULATING REVERBERATION IN A MULTIPATH SONAR SYSTEM; filed 10 July 1997; patented 14 December 1999.//

Patent 6,005,568: COMPUTER SYSTEM PROVIDING PLATFORM INDEPENDENT UNIVERSAL CLIENT DEVICE; filed 30 September 1997; patented 21 December 1999.//

Patent 6,006,145: METHOD AND APPARATUS FOR DIRECTING A PURSUING VEHICLE TO A TARGET WITH INTELLIGENT EVASION CAPABILITIES; filed 30 June 1997; patented 21 December 1999.//

Patent 6,007,278: DEVICE FOR MACHINING AN INTERIOR SURFACE OF A TUBULAR OBJECT; filed 5 September 1996; patented 28 December 1999.//Patent 6,007,926: PHASE STABILIZATION OF ZIRCONIA; filed 30 January 1997; patented 28 December 1999.//

Patent 6,008,641: METHOD USING CORRECTIVE FACTORS FOR ALIGNING A MAGNETIC GRADIOMETER; filed 22 October 1997; patented 28 December 1999.//

Patent 6,009,045: ADVANCED VERTICAL ARRAY BEAMFORMER; filed 13 August 1998; patented 28 December 1999.//Patent 6,009,185: NEURAL NETWORK BASED CONTACT STATE ESTIMATOR; filed 7 May 1996; patented 28 December 1999.//

Patent application 09/111,370: CLASSIFICATION OF IMAGES USING A DICTIONARY OF COMPRESSED TIME-FREQUENCY ATOMS; filed 30 June 1998.//

Patent application 09/287,170: FLOW RELEASE ELASTOMERIC EJECTION SYSTEM; filed 2 April 1999.//

Patent application 09/332,407: PRECISION HINGE MOUNTING STOPS; filed 14 June 1999.//Patent application 09/337,222: FLEXIBLE CABLE PROVIDING EMI SHIELDING; filed 7 June 1999.//Patent application 09/379,210: SYSTEM AND METHOD FOR DETECTION OF WHITE NOISE IN SPARSE DATA SETS; filed 20 August 1999.//

Patent application 09/435,832: OPTICAL FILTERS BASED ON UNIFORM ARRAYS OF METALLIC WAVEGUIDES; filed 8 November 1999.//

Patent application 09/448,765: INTEGRATED OBJECT-ORIENTED FRAMEWORK FOR MULTIPLE DATA TYPES; filed 24 November 1999.//

Patent application 09/450,439: PRODUCTION OF HOLLOW METAL MICROCYLINDERS FROM LIPIDS; filed 30 November 1999.//Patent application 09/451,718: ZEUS++ CODE TOOL, A METHOD FOR IMPLEMENTING SAME, AND STORAGE MEDIUM STORING COMPUTER READABLE INSTRUCTIONS FOR INSTANTIATING THE ZEUS++CODE TOOL; filed 1 December 1999.//Patent application 09/457,007: A TECHNIQUE FOR ESTIMATING THE POSE OF SURFACE SHAPES USING TRIPOD OPERATORS; filed 8 December 1999.//Patent application 09/457,521: METHOD AND DESIGN FOR THE SUPPRESSION OF SINGLE EVENT UPSET FAILURES IN DIGITAL CIRCUITS MADE FROM GAAS AND RELATED COMPOUNDS; filed 9 December 1999.//

Patent application 09/464,090: PENTACENE DERIVATIVES AS RED EMITTERS IN ORGANIC LIGHT EMITTING DEVICES; filed 16 December 1999.//

Patent application 09/476,332: AUTONOMOUS SURVEY SYSTEM (AUTO SURVEY); filed 3 January 2000.//Patent application 09/477,147: ENERGY ABSORBING COUNTERMASS ASSEMBLY; filed 5 January 2000.//Patent application 09/477,149: ROCKET MOTOR WITH DESENSITIZER INJECTOR; filed 4 January 2000.//Patent application 09/477,941: CHEMICAL AND BIOLOGICAL WARFARE DECONTAMINATING SOLUTION USING BLEACH ACTIVATORS; filed 5 January 2000.//

Patent application 09/480,422: DUAL ADJUSTING OVERRIDE PRECISION SWITCH ACTIVATOR; filed 10 January 2000.//Patent application 09/480,535: PARTICLE SIZING TECHNIQUE; filed 10 January 2000.//Patent application 09/504,396: AIR SUPPLY SYSTEM PARTICULARLY SUITED TO REMOVE CONTAMINANTS CREATED BY CHEMICAL, BIOLOGICAL OR RADIOLOGICAL CONDITIONS; filed 15 February 2000.//

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Associate Counsel, Intellectual Property, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

(Authority: 35 U.S.C. 207; 37 CFR Part 404)

Dated: May 12, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–12998 Filed 5–23–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–355–002]

Baltimore Gas and Electric Company; Notice of Filing

May 18, 2000.

Take notice that on May 1, 2000, Baltimore Gas and Electric Company (BGE), and Columbia Gas Transmission Corporation (Columbia) separately filed reports to comply with a Commission order issued July 29, 1999, in Docket No. RP99–355–000. The filings report on the parties' efforts to develop an unbundling program with BGE that does not require waiver of the Commission's shipper must have title policy.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13011 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF00–2011–000]

United States Department of Energy—Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Issued May 19, 2000.

In this order, we approve the Bonneville Power Administration's (Bonneville) proposed rates on an interim basis, pending our full review for final approval. We also provide for an additional period of time for the parties to file comments.

Background

On March 21, 2000, the Bonneville Power Administration (Bonneville) filed a request for interim and final approval of an adjustment of its Firm Power Products and Services rate schedule (FPS–96R) in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) [1] and Subpart B of Part 300 of the Commission's regulations.[2] FPS–96R was previously approved by the Commission for a ten-year period through September 30, 2006.[3] The filing incorporates into FPS–96R seasonally and diurnally adjusted rates for the capacity without energy product; the rates were inadvertently omitted when the rate schedule was originally adopted. Bonneville contends that the purpose of this filing is to allow Bonneville to recover the costs that are incurred by Bonneville offering this product, as the inadvertent omission could distort the revenue requirements already adopted by the Commission. Bonneville states that no other aspect of FPS–96R is being adjusted, and it otherwise continues in full force and effect through September 30, 2006.

In accordance with the statutory procedure, [4] Bonneville seeks interim approval of its rates, effective May 1, 2000, pending Commission consideration of whether to approve the rates on a final basis. Bonneville requests approval of the modification of the FPS–96R rate for the period beginning May 1, 2000, through September 30, 2006.

Notice of Filing and Interventions

Notice of Bonneville's filing was published in the Federal Register, 65 Fed. Reg. 19,370 (2000), with comments, protests, or motions to intervene due on or before April 20, 2000.

Goldendale Aluminum Company, Northwest Aluminum Company, Reynolds Metals Company, Kaiser Aluminum & Chemical Corporation, and Elf Atochem, North America (the Aluminum Companies) jointly filed a timely motion to intervene, raising no substantive issues.

Southern California Edison Company (SoCal Edison) filed a timely motion to intervene and protest. SoCal Edison requests that Bonneville's filing be rejected and that interim approval of the rate be denied. SoCal Edison argues that there is no evidence supporting the filing and that Bonneville has failed to comply with the applicable provisions of the Northwest Power Act. SoCal Edison further opposes Bonneville's request for waiver of the filing requirements and the 60-day prior notice requirement of the Commission's regulations. In the alternative, SoCal Edison requests that the Commission deny Bonneville interim approval of the proposed rate, suspend the proposed rate and set this matter for an evidentiary hearing.

SoCal Edison disputes both the procedure by which Bonneville developed the rate and the procedures it has followed in this processing. SoCal Edison states that the methodology used by Bonneville in developing the proposed rate is inconsistent with Bonneville's general obligations to set rates having regard to the recovery of the cost of generation and transmission, to encourage the most widespread use of Bonneville power, and to set rates at the lowest possible rates to consumers. SoCal Edison asserts that the proposed rate is not based upon the actual costs of generation and transmission incurred by Bonneville. Instead, SoCal Edison asserts, Bonneville has proposed a rate supposedly based upon the market even though, by the testimony of its own witness, no market exists.[5] SoCal Edison argues that Bonneville's methodology used in developing this market rate is not supported by credible data or analyses and is inconsistent with the methodology used in developing either market-based rates or cost-based rates in both the 1996 general rate proceeding and the general rate proceeding that

[1] Sections 7(a)(2) and 7(i)(6) of the Northwest Power Act, 16 USC §§ 839e(a)(2) and 839e(i)(6) (1994).

[2] 18 C.F.R. Part 300 (1999).

[3] *See* United States Department of Energy—Bonneville Power Administration, 80 FERC ¶ 61,118 (1997).

[4] Sections 7(a)(2) and 7 (i)(6), 16 U.S.C. §§ 839e(a)(2) and 839e(i)(6) (1994).

[5] SoCal Edison cites to the Cross-Examination Testimony of Gary Bolden, Tr. at 146, lines 6–11.

Bonneville initiated concurrently with the FPS–96R expedited proceeding.

Bonneville filed an answer to SoCal Edison's motion to intervene and protest. Bonneville states, among other things, that it has no objection to a proposed effective date of May 22, 2000. SoCal Edison filed a reply to Bonneville's answer on May 12, 2000.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1996), the timely and unopposed motions to intervene to the Aluminum Companies and SoCal Edison serve to make them parties to this proceeding.

Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2), (1999), prohibits answers unless otherwise permitted by decisional authority. We find good cause to allow part of Bonneville's answer, that pertaining to the issue of the effective date, because it provides additional information that assists us in the decision-making process. We will, however, reject that the remainder of Bonneville's answer and SoCal Edison's reply as an impermissible answer to a protest and an answer to an answer, respectively, because they deal with issues other than the effective date.

Standard of Review

Under the Northwest Power Act, the Commission's review of Bonneville's regional power and transmission rates is limited to determining whether Bonneville's proposed rates meet the three specific requirements of section 7(a)(2):

(1) They must be sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs;

(2) They must be based upon the Administrator's total system costs; and

(3) Insofar as transmission rates are concerned, they must equitably allocate the costs of the Federal transmission system between Federal and non-Federal power.[6]

Commission review of Bonneville's non-regional, nonfirm rates also is limited. Review is restricted to determining whether such rates meet the requirements of section 7(k) of the Northwest Power Act,[7] which requires that they comply with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act (Transmission System Act). Taken together, those statutes require Bonneville to design its non-regional, nonfirm rates:

(1) To recover the cost of generation and transmission of such electric energy, including the amortization of investments in the power projects within a reasonable period;

(2) To encourage the most widespread use of Bonneville power; and

(3) To provide the lowest possible rates to consumers consistent with sound business principles.

Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under sections 7(a) and 7(k) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission's role can be viewed as an appellate one: to affirm or remand the rates submitted to it for review.[8]

Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,[9] the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the proposed rates, if not patently deficient, generally are approved on an interim basis and the parties are afforded an additional opportunity in which to raise issues with regard to Bonneville's filing.[10]

Interim Approval

SoCal Edison argues that Bonneville violated the procedural requirements of section 7(i) of the Northwest Power Act in proposing these rates. The Commission, however, does not review purported deficiencies in the Administrator's compliance with the procedural requirements of the Act. [11]

In addition, we are unpersuaded that the arguments of SoCal Edison justify summary rejection of the filing or refusal to approve these rates on an interim basis. We believe, rather, that these issues should be addressed in the course of our final review of these rates. At that time, intervenors may challenge the assumptions underlying Bonneville's filing. Moreover, intervenors will be protected by an express condition that the interim rates will be collected subject to refund with interest. [12]

In its transmittal letter, Bonneville requests interim approval of its proposed FPS-96R rate adjustment effective May 1, 2000; however, the transmittal letter does not include a request for waiver of the Commission's 60-day prior notice requirement to permit a May 1, 2000 effective date or any justification for such waiver. SoCal Edison points out that the draft notice filed by Bonneville with the Commission states that Bonneville is requesting an effective date of May 19, 2000, which date is 60 days after the date of Bonneville's transmittal letter, and which appears to be Bonneville's attempt to design an effective date that complies with the 60-day prior notice requirement. SoCal Edison requests that Bonneville's request for a May 19, 2000 effective date be rejected because the 60th day would be May 20, 2000, and a request for waiver should be filed for any date prior to May 21, 2000. SoCal Edison adds that Bonneville did not request such a waiver, nor did Bonneville show any good cause for the waiver. In its answer, Bonneville states that it simply miscalculated the number of days, and inadvertently requested to have the effective date occur on the 59th day. Bonneville states that it has no objection to changing the proposed effective date to Monday, May 22, 2000. Accordingly, we will accept Bonneville's proposed rate schedule to become effective on May 22, 2000.

The Commission's preliminary review indicates that the filing appears to meet the minimum threshold filing requirements of Part 300 of the Commission's regulations and the statutory standards. Because the Commission's preliminary review of Bonneville's submittal indicates that it does not contain any patent deficiencies, the proposed rates will be approved on an interim basis pending our full review for final approval.

In addition, we will provide an additional period of time for the parties to file comments and reply comments on all issues related to final

[6] 16 U.S.C. § 839e(a)(2) (1994). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

[7] 16 U.S.C. § 839e(k) (1994).

[1] *E.g.*, United States Department of Energy—Bonneville Power Administration, 67 FERC ¶ 61,351 at 62,216–17 (1994); *see also, e.g.*, Aluminum Company of America v. Bonneville Power Administration, 903 F.2d 585, 592–93 (9th cir. 1989), and cases cited therein.

[9] *See* 18 CFR § 300.10(a)(3)(ii) (1996).

[10] *See, e.g.,* United States Department of Energy—Bonneville Power Administration, 64 FERC ¶ 61,375 at 63,606 (1993); United States Department of Energy—Bonneville Power Administration, 40 FERC ¶ 61,351 at 62,059–60 (1987).

[11] *See* U.S. Department of Energy—Bonneville Power Administration, 28 FERC ¶ 61,078 at 61,146–47 and 61,148 n.2 (1984).

[12] 18 CFR § 300a.20(c) (1999).

confirmation and approval of Bonneville's proposed rates.

The Commission Orders:

(A) SoCal Edison's request to reject Bonneville's request for interim approval of the proposed rates is hereby denied.

(B) SoCal Edison's motion for summary rejection of the filing is hereby denied.

(C) Interim approval of Bonneville's proposed FPS–96R rate schedule is hereby granted, to become effective on May 22, 2000, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (1999), pending final action on either its approval or disapproval.

(D) Within thirty (30) days of the date on the date of this order, all parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. All parties who wish to do so may file reply comments within twenty (20) days thereafter.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13050 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–364–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Application

May 18, 2000.

Take notice that on May 11, 2000, Kinder Morgan Interstate Transmission LLC (Kinder Morgan), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP00–364–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline compression facilities located in Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Kinder Morgan proposes to abandon by removal a 500 horsepower compressor unit at the Stockton Compressor Station in Rooks County, Kansas. Kinder Morgan states that this unit has not been used since 1985 because of declining gas reserves in the area. Kinder Morgan proposes to abandon by removal 6 compressor units totaling 6,950 horsepower at the Palco Compressor Station also located in Rooks County, Kansas. It is asserted that the compressor station has not been used since February 1988, also due to declining gas reserves in the area. Kinder Morgan proposes to abandon in place 3 compressor units at the Lakin Compressor Station located in Kearny County, Kansas. It is stated that these units, one 1,100 horsepower unit, and two 1,600 horsepower units, have not been utilized since July 1995 because of reduced gas production in the Hugoton Field.

Kinder Morgan estimates the cost of retiring the facilities at $716,000 and the salvage value at $25,000. It is asserted that the proposed abandonments will not negatively impact gas flows or the ability to render transportation service on Kinder Morgan's system. It is further asserted that the abandonments will not require any change in Kinder Morgan's FERC Gas Tariff.

Any questions regarding the application should be directed to B.J. Becker, Assistant General Counsel, at (303) 763–3496, Kinder Morgan Interstate Gas LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Kinder Morgan to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13009 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–285–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 18, 2000.

Take notice that on May 15, 2000 Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Forty-Eighth Revised Sheet No. 5, proposed to be effective July 1, 2000.

Northwest Alaskan states that the instant filing is submitted pursuant to Section 4 of the Natural Gas Act, Section 9 of the Alaskan Natural Gas Transportation Act of 1976 and Part 154 of the Federal Energy Regulatory Commission's Regulations. Northwest Alaskan is submitting this filing pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Pan-Alberta Gas (U.S.), Inc. (PAG–US), and pursuant to Rate Schedules X–1, X–2, and X–3, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 2000 through December 31, 2000) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that included in Appendix B attached to the filing are the workpapers supporting the derivation of the revised demand charge adjustment reflected on the tariff sheet included therein.

Northwest Alaskan states that it is serving copies of the instant filing to its affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13012 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1499–003, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

May 15, 2000.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER98–1499–003]

Take notice that on May 11, 2000, the California Independent System Operator Corporation, tendered for filing numerous Meter Service Agreements for acceptance by the Commission. The purpose of the filing is to comply with the Commission's Letter Order of February 24, 2000.

The ISO states that this filing has been served on the persons listed on the official service list in Docket Nos. ER98–1499–000, et al. and the California Public Utilities Commission.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation

[Docket No. ER00–1642–001]

Take notice that on May 10, 2000, California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing revised pages of the CTS Rate Schedule FERC No. 1 in compliance with the April 25, 2000 order in this docket. The April 25, 2000 order (1) permitted CTS to add delivery locations and delivery periods on an experimental basis for one year without making a Section 205 filing and (2) required CTS to limit the scope of its filing to ancillary services as opposed to a broader range of services called ''energy related products.''

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. New Century Services, Inc.

[Docket No. ER00–2421–000]

Take notice that on May 5, 2000, New Century Services, Inc., on behalf on Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the companies), tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and PPL Montana LLC.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER00–2446–000]

Take notice that on May 8, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), tendered for filing nineteen Notices of Cancellation for certain service schedules of affected agreements as well as for the agreements in their entirety. These agreements were established in the following Docket Numbers: OA97–270–000, OA97–327–000, OA97–328–000, OA97–329–000, OA97–331–000, OA97–332–000, OA97–335–000, OA97–336–000, OA97–338–000, OA97–339–000, OA97–340–000, OA97–344–000, OA97–345–000, OA97–349–000, OA97–350–000, OA97–351–000, OA97–354–000, OA97–528–000 and OA97–555–000.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Indianapolis Power & Light Company

[Docket No. ER00–2447–000]

Take notice that on May 9, 2000, Indianapolis Power & Light Company tendered for filing a Remote Control Operating Agreement between West Fork Land Development Company, L.L.C., and Indianapolis Power & Light Company in the above-captioned docket.

Copies of this filing were served on West Fork Land Development Company, L.L.C.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. LSP-Nelson Energy, LLC

[Docket No. ER00–2448–000]

Take notice that on May 9, 2000, LSP-Nelson Energy, LLC (LSP-Nelson) tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for the sale to wholesale purchasers at market-based rates of the output of an electric power generation facility to be developed by LSP-Nelson in Nelson Township, Lee County, Illinois (the Facility).

LSP-Nelson requests that the Commission accept the rate schedule for filing, to become effective as of the date that service commences at the Facility.

A copy of the filing was served upon the Illinois Commerce Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–2449–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Jasper County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER00–2450–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Crawford County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–2451–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Morgan County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER00–2452–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Jackson County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER00–2453–000]

Take notice that on May 10, 2000, Ameren Services Company (ASC), tendered for filing an Interconnection Agreement between ASC and Ameren Energy Generating Company (AEGC). ASC asserts that the purpose of the Agreement is to establish terms and conditions under which AEGC must operate its facility in Montgomery County, Illinois in parallel with Ameren's transmission system.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER00–2454–000]

Take notice that on May 10, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing unexecuted firm Transmission Service Agreements between: (1) Wisconsin Electric and Wisconsin Public Service Corporation (WPSC); and (2) Wisconsin Electric and Madison Gas & Electric Company (MG&E) (MG&E and WPSC are individually referred to as the Transmission Customer). The Transmission Service Agreements provide firm point-to-point transmission service to the Transmission Customer under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with the commercial in-service date of MG&E's M34 generating resource. Wisconsin Electric also requests waiver of the Commission's notice requirements because the in-service date of the M34 generating resource is anticipated to be in early May, 2000. Additionally, Wisconsin Electric has filed a motion to consolidate the above-referenced docket with Docket No. ER00–2158–000.

Copies of the filing have been served on Madison Gas & Electric, Wisconsin Public Service Corporation, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New Century Services, Inc.

[Docket No. ER00–2455–000]

Take notice that on May 10, 2000, New Century Services, Inc. (NCS), on behalf of Southwestern Public Service Company (SPS), tendered for filing the Interconnection Agreement between Sunflower Electric Power Corporation (Sunflower) and SPS. NCS states that the primary purpose of the Interconnection Agreement is to set out the terms and conditions governing an interconnection to be constructed between the SPS and Sunflower systems.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The Detroit Edison Company

[Docket No. ER00–2456–000]

Take notice that on May 10, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Conectiv Energy Supply, Inc.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Energy Company

[Docket No. ER00–2457–000]

Take notice that on May 10, 2000, Consumers Energy Company (Consumers), tendered for filing executed service agreements for unbundled wholesale power service with Coral Power, L.L.C. and British Columbia Power Exchange Corporation pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the respective service agreements.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Carolina Power & Light Company

[Docket No. ER00–2458–000]

Take notice that on May 10, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Power Sales Agreement with Duke Power under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of July 1, 2000 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PPL Utilities

[Docket No. ER00–2459–000]

Take Notice that on May 10, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.)(PPL), tendered for filing a Service Agreement dated April 26, 2000, with City of Vineland, New Jersey (Vineland) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Vineland as an eligible customer under the Tariff.

PPL requests an effective date of May 10, 2000, for the Service Agreement.

PPL states that copies of this filing have been supplied to Vineland and to the Pennsylvania Public Utility Commission.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk

[Docket No. ER00–2460–000]

Take notice that on May 10, 2000, Niagara Mohawk, tendered for filing with the Federal Energy Regulatory Commission an executed letter agreement as a supplement to a Transmission Service Agreement between Niagara Mohawk and American Municipal Power-Ohio, Inc., designated

as Rate Schedule No. 140. This letter agreement extends the termination date of Rate Schedule No. 140.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and American Municipal Power-Ohio, Inc.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company and Commonwealth Edison Company of Indiana

[Docket No. ER00–2461–000]

Take notice that on May 10, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing an amendment to ComEd's OATT so as to remove time frames set forth in ComEd's Form of Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Form of Service Agreement) that are inconsistent with the reservation timing requirements adopted by the Commission on February 25, 2000 in its ''Open Access Same-Time Information System and Standards of Conduct, Order No. 638,'' Docket No. RM95–9–003, FERC Regulations Preambles ¶ 31,093 (Order No. 638). Accordingly, ComEd is amending the Form of Service Agreement to provide that Transmission Customers must confirm accepted requests for service within the reservation timing requirements found in the Business Practice Standards for Open Access Same-Time Information System (OASIS) Transactions document adopted by the Commission. ComEd is also updating the Form of Service Agreement to reflect personnel changes.

ComEd requests an effective date of May 30, 2000 to coincide with the effective date of Order No. 638 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Cleco Utility Group Inc.

[Docket No. ER00–2462–000]

Take notice that on May 10, 2000, Cleco Utility Group Inc. (Cleco), tendered for filing proposed changes in its Rate Schedule FERC No. 13, which would amend its Electric System Interconnection Agreement with Louisiana Generating LLC.

The proposed rate change amends and adds stated points of delivery under the Electric System Interconnection Agreement between Cleco and Louisiana Generating LLC.

Copies of the filing were served upon the Louisiana Generating LLC and the Louisiana Public Service Commission.

21. Entergy Services, Inc.

[Docket Nos. OA97–337–001, OA97–342–001, OA97–346–001, OA97–348–001, OA97–570–001, OA97–574–001, OA97–614–001, OA97–625–001, OA97–627–001, OA97–632–001 and OA97–646–001]

Take notice that on May 8, 2000, Entergy Services, Inc. filed with the Federal Energy Regulatory Commission (Commission) a compliance report in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13007 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–86–000, et al.]

DTE Energy Company, et al.; Electric Rate and Corporate Regulation Filings

May 16, 2000.

Take notice that the following filings have been made with the Commission:

1. DTE Energy Company, The Detroit Edison Company, International Transmission Company

[Docket No. EC00–86–000]

Take notice that on May 4, 2000, DTE Energy Company, The Detroit Edison Company and International Transmission Company filed a joint application for authorization to transfer jurisdictional transmission assets pursuant to Section 203 of the Federal Power Act.

Comment date: June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Adirondack Hydro Development Corporation, Hudson Falls, LLC

[Docket No. EC00–88–000]

Take notice that on May 8, 2000, Adirondack Hydro Development Corporation and Hudson Falls, LLC, tendered for filing a joint application under Section 203 of the Federal Power Act for authorization to sell half of their limited and general partnership interests in Northern Electric Power Co., L.P. (Northern) to Bloomfield Hudson Falls, Inc. Northern is a public utility that owns a 36.1 MW qualifying facility located in upstate New York.

Comment date: June 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. LSP-Nelson Energy, LLC

[Docket No. EG00–147–000]

Take notice that on May 9, 2000, LSP-Nelson Energy, LLC (Applicant), a Delaware limited liability company with a principal place of business at Two Tower Center, 20th Floor, East Brunswick, New Jersey 08816, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The Applicant will begin constructing a natural gas-fired combined cycle electric generation facility with a nominal capacity of approximately one thousand one hundred (1,100) megawatts in Nelson Township, Lee County, Illinois (the Facility). The Facility is scheduled to commence commercial operation in the Spring of 2003. The Applicant is engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy from the Facility at wholesale.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Midwest Electric Power, Inc.

[Docket No. EG00–149–000]

Take notice that on May 11, 2000, Midwest Electric Power, Inc. (MEP), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

MEP is a wholly-owned subsidiary of Electric Energy, Inc. (EEInc.), which owns and operates a coal-fired generating plant in Joppa, IL. MEP intends to own and/or operate combustion turbines with a total generating capacity of approximately 260 MW to be located at the site of the existing EEInc. generating facilities. All of the capacity and energy available from those units will be sold at wholesale.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Williams Flexible Generation, LLC

[Docket No. EG00–150–000]

Take notice that on May 11, 2000, Williams Flexible Generation, LLC (WFG) tendered for filing pursuant to Part 365 of the Commission's Regulations (18 CFR 365), its application for determination of exempt wholesale generator status.

WFG is a wholly owned subsidiary of Williams Distributed Power Services, Inc. and initially will own the ''Georgia Project,'' which consists of generating units at eighteen separate sites, as follows: DeWitt, located in Brooks County, Georgia; Bryant, located in Tift County, Georgia; Farmer's Gin, located in Colquitt County, Georgia; Doerun, located in Colquitt County, Georgia; Moultrie Station, located in Colquitt County, Georgia; Dublin, located in Laurens County, Georgia; Danville, located in Twiggs County, Georgia; Wrens, located in Jefferson County, Georgia; Louisville, located in Jefferson County, Georgia; Hammonds Crossing, located in Gwinnett County, Georgia; Highway 141, located in Gwinnett County, Georgia; Highway 20, located in Gwinnett County, Georgia; Baker Highway, located in Coffee County, Georgia; Pine Grove, located in Appling County, Georgia; Hawkinsville #1, located in Pulaski County, Georgia; Bratcher Creek, located in Dooly County, Georgia; Smith, located in Barrow County, Georgia; and Walnut Grove, located in Walton County, Georgia.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Ameren Energy Development Company

[Docket No. EG00–151–000]

Take notice that on May 11, 2000, Ameren Energy Development Company (Development Co.), c/o Ameren Services, 1901 Chouteau Avenue, St. Louis, MO 63166, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Development Co. is the corporate parent of Ameren Energy Generating Company (Generating Co.), a generation-only company which recently acquired five electric generating stations from Central Illinois Public Service Company (AmerenCIPS) with approximately 2900 MW of generating capacity. In addition to owning the common stock of Generating Co., Development Co. will acquire and finance certain new combustion turbine generators to be owned and operated by Generating Co. All of the capacity and energy available to Generating Co. is sold exclusively to wholesale purchasers.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Ameren Services Company

[Docket No. ER00–1762–001]

Take notice that on May 11, 2000, Ameren Services Company (ASC), tendered for filing an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement, between ASC and the City of Fredericktown. ASC asserts that the purpose of the agreements is to permit ASC to provide service over its transmission and distribution facilities to the City of Fredericktown pursuant to the Ameren Open Access Tariff. The executed agreements supersede an unexecuted Network Service Agreement and an unexecuted Network Operating Agreement previously filed on March 1, 2000.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. NorthWestern Public Service, a division of NorthWestern Corporation

[Docket No. ER00–2464–000]

Take notice that on May 11, 2000, NorthWestern Public Service, division of NorthWestern Corporation, tendered for filing a Petition under Commission Rules 205 and 207 and 35.14 of the Regulations of the Commission under the Federal Power Act, requesting that the Commission enter its order adopting the plan for Arbitration Case damage and interest crediting to NorthWestern's wholesale electric customers through NorthWestern's adjustment clause and waiving any provisions of such adjustment clause that might be inconsistent with such crediting plan. NorthWestern proposes to credit $5,860.58 to its wholesale electric customers in the State of South Dakota, representing arbitration award damages and interest, less certain costs incurred by NorthWestern in obtaining such damages and other coal agreement contract changes.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER00–2465–000]

Take notice that on May 11, 2000, Western Resources, Inc., tendered for filing a change to Service Schedule 6 under its FERC Electric Tariff, Original Volume No. 1. Western Resources states that the change is to realign transmission capacity available to Oklahoma Municipal Power Authority.

Notice of the filing has been served upon Oklahoma Municipal Power Authority and the Kansas Corporation Commission.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER00–2466–000]

Take notice that on May 11, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the fully executed to Amendment No. 3 to Contract No. 91–SAO–30005 between PacifiCorp and Western Area Power Administration.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–2467–000]

Take notice that on May 11, 2000, Commonwealth Edison Company (ComEd) tendered for filing four Non-Firm Transmission Service Agreements with the City of St. Charles, Illinois (St. Charles), the City of Batavia, Illinois (Batavia), InPower Marketing Corp. (IPMC), and Dynegy Energy Services, Inc. (DESY), and four Short-Term Firm Transmission Service Agreements with DESY, Merchant Energy Group of the Americas, Inc. (MEGA), NewEnergy, Inc. (NEI), and IPMC under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd requests that the Commission substitute the Service Agreement with MEGA for the unexecuted agreement with MEGA previously filed under the OATT in Docket No. ER00–2260–000 on April 21, 2000.

ComEd also submits for filing an updated Index of Customers reflecting the addition of St. Charles, Batavia, IPMC, DESY, and NEI, and name changes for current customers PP&L, Inc, renamed PPL Electric Utilities Corporation d/b/a PPL Utilities (PPL); PP&L EnergyPlus Co, LLC, renamed PP&L EnergyPlus LLC. (EPLUS).

ComEd requests an effective date of and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served on St. Charles, Batavia, IPMC, DESY, MEGA, NEI, PPL and EPLUS.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER00–2468–000]

Take notice that on May 11, 2000, Portland General Electric Company (PGE), on May 9, 2000, tendered for filing proposed changes in its FERC Electric Service Tariff No. 11 to reflect its affiliation with PG&E Energy Services Corporation (PG&E ES). PGE also filed a revised Code of Conduct that will generically restrict the relationship of PGE with all of its affiliates with market-based rate authority, including PG&E ES.

Copies of the filing were served upon the Oregon Public Utility Commission, the California Public Utility Commission, the California Independent System Operator Corporation, and PG&E Energy Services Corporation.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Services Company

[Docket No. ER00–2471–000]

Take notice that on May 9, 2000, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, The Connecticut Light and Power Company (CL&P), tendered for filing Notice of Cancellation of the Federal Energy Regulatory Commission (FERC) rate schedules and supplements thereto for Unit Contract Connecticut Yankee, Rate Schedule FERC No. CL&P 225, by and between CL&P and the Connecticut Municipal Electric Energy Cooperative (CMEEC).

NUSCO requested that the cancellation become effective as of April 30, 2000.

The termination of this contract is part of a larger settlement of disputes between CL&P and CMEEC, including disputes related to the operation, shutdown and decommissioning of the Connecticut Yankee nuclear plant.

Copies of the filing were served upon the jurisdictional customer, CMEEC, as well as upon CL&P and the Connecticut Department of Public Utilities Control.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Williams Flexible Generation, LLC

[Docket No. ER00–2469–000]

Take notice that on May 11, 2000, Williams Flexible Generation, LLC tendered for filing pursuant to Section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, its application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1.

Comment date: June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Electric Energy, Inc.

[Docket No. EG00–148–000]

Take notice that on May 11, 2000, Electric Energy, Inc. (EEInc.), 2100 Portland Road, P.O. Box 165, Joppa, IL 62953 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

EEInc. is a generation-only company, the stock of which is owned by Union Electric Company (40%), Central Illinois Public Service Company (20%), Illinova Generating Company (20%), and Kentucky Utilities Company (20%) (collectively, the Sponsors). EEInc. owns and operates a six-unit coal-fired generating plant in Joppa, IL that has a total generating capacity of 1,086 MW (the ''Joppa Plant''). All of the electricity available from the Joppa Plant is sold at wholesale either to the U.S. Department of Energy, to the Sponsors, or to other wholesale purchasers. EEInc. also owns all of the outstanding common stock of Midwest Electric Power, Inc., which will own and/or operate 260 MW of combustion turbine generating capacity to be installed at the site of the Joppa Plant and sell electricity exclusively at wholesale.

Comment date: June 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13049 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 420–009, Alaska]

City of Ketchikan and Ketchikan Public Utilities; Notice of Availability of Final Environmental Assessment

May 18, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Ketchikan Lakes Hydroelectric Project, and has prepared a Final Environmental

Assessment (FEA). The project is located on Ketchikan Creek and Granite Basin Creek, near the City of Ketchikan, in Ketchikan Gateway Borough, Alaska. The project uses lands administered by the U.S. Forest Service in the Tongass National Forest. The Forest Service is a cooperating agency on this environmental assessment. The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NW., Washington, DC 20426. This FEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). For further information, contact Charles Hall at (202) 219–2853.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13010 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–75–000]

Notice of Interim Procedures To Support Industry Reliability Efforts and Request for Comments

May 17, 2000.

As the electric industry prepares for another summer of potentially high peak demands, the Commission believes it is important to identify practical steps the Commission and others can take to support the industry's efforts to ensure the continued reliability of the electric power system.[1] Accordingly, the Commission hereby announces a number of specific actions it will implement on an interim basis this summer, and requests comments on these and other actions the Commission could take to assist others in their efforts to address system reliability this summer.

Background

While the Commission does not have direct responsibility over reliability matters, its consistent policy has been to assure that the exercise of its ratemaking and other jurisdictional responsibilities supports and facilities the continued high degree of reliability that has existed in the U.S. Indeed, transmission system reliability is one of the principal issues sought to be addressed by the Commission's recent rulemaking on Regional Transmission Organizations.[2] The Commission has also been monitoring the functioning of electricity markets and has been encouraging good utility practices through its Enforcement Hotline and other programs.

Our objective is not to become involved in the day-to-day operation of the electric grid or to duplicate or supplant the efforts of others in the industry that are engaged in inquiries about electric reliability issues. However, it is important that the Commission exercise its regulatory mandate in a manner that supports, and does not impede, efforts to enhance reliability throughout the industry. The Commission has identified five actions that it can take, in exercising its regulatory responsibilities, that may provide such support this summer by, for example, supporting efforts to increase generation supply, supporting efforts to implement demand-side management, and supporting efforts to maximize the amount of Available Transmission Capability (ATC) this summer. In addition to these actions, the Commission will be expediting individual cases affecting reliability planning for this summer which are pending before the Commission in other dockets.

Actions Commission Will Implement During the Summer of 2000

The Commission hereby announces the following actions that it will implement to support the electric industry's efforts in dealing with reliability issues this summer. Although these actions are within the Commission's authority to implement on an immediate basis and will be in effect on an experimental basis from the date of this Notice through September 30, 2000, we invite comments on them.

1. There are many businesses that have installed generators at their business location to meet a portion of their own demands or to serve as a backstop to their purchase of electricity from the local grid. These generators may provide a ready source of generation capacity during periods when power markets are facing a temporary generation shortage. Indeed, we recently approved a tariff under which the owners of such generation could sell electricity to a power marketer in *InPower Marketing Corporation*.[3] In order to facilitate the use of existing on-site generators to meet demand, the Commission will adopt a streamlined regulatory procedure to accommodate sales from such facilities to any entity engaged in sales of electric energy. Owners of generating facilities located at business locations and used primarily for back-up for self-generation, who would become subject to the Federal Power Act by virtue of sales of power from such facilities,[4] will be permitted to sell power at wholesale from such facilities to non-affiliated entities without prior notice under section 205 of the FPA. Pursuant to FPA section 205(d), we find good cause to waive the prior notice requirements for such sales. Further, the Commission hereby grants waiver of its regulations consistent with our recent orders on market-based rates,[5] and authorizes market-based rates during the identified time period, subject to the following requirements: The wholesale purchasers

[1] We note that other governmental and industry sources share a heightened awareness to current reliability issues. *See, e.g.,* Report of the U.S. Department of Energy's Power Outage Study Team, Findings and Recommendations to Enhance Reliability from the Summer of 1999, at S–1, S–2 (March 2000) (''the reliability events of the summer of 1999 demonstrated that the necessary operating practices, regulatory policies, and technological tools for assuring an acceptable level of reliability were not yet in place''); Investigation Into The Adequacy and Availability of Electric Power (Pub. Util. Comm. of Ohio, Case No. 00–617–EL–COI, April 10, 2000) (Ohio Commission notes that ECAR is predicting a tight capacity situation this summer); High Temperatures & Electricity Demand: An Assessment of Supply Adequacy in California Trends & Outlook (July 1999) (California Energy Commission staff report showing decreasing reserve margins); Northwest Power Planning Council, Pacific Northwest Power Supply Adequacy/Reliability Study (February 2000) (24 percent probability of being unable to serve winter loads by 2003).

[2] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (2000), FERC Stats. and Reg. ¶ 31,089 at 30,997–99 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

[3] Order Accepting For Filing Proposed Market-Based Rate Schedule And Granting Waivers, 90 FERC ¶ 61,329 (2000) (*InPower*).

[4] We note that while entities become ''public utilities'' subject to the Federal Power Act when they commence the sale of electric energy at wholesale in interstate commerce, they cease to be public utilities when such sales cease (assuming they engage in no other activities that would make them public utilities) without further Commission action. *See* Century Power Corporation, 72 FERC ¶ 61,045 at 61,279 (1995).

[5] *See, e.g., InPower*, 90 FERC at 62,105; Reliant Energy, Inc., *et al.,* 91 FERC ¶ 61,073 at Appendix B (2000). The Commission has generally waived for such sellers the following parts of its regulations in 18 CFR: most of Subparts B and C of Part 35 (documentation), Part 41 (accounting verification), Part 101 (prescribed Uniform System of Accounts), and Part 141 (annual reports). In addition, where requirements are statutory, the Commission has allowed such sellers to make shortened filings to satisfy Part 33 (disposition of facilities) and Part 45 (interlocking positions), and has granted blanket authorizations for issuances of securities (Part 34).

of power from such facilities must report to the Commission the names of each such seller from whom power was purchased, the aggregate amount of capacity and/or energy purchased from each seller, and the aggregate compensation paid to each seller.[6] To minimize the number of required reports, the purchaser may make one report for all purchases through September 30, and, if it otherwise files quarterly transactions summaries with the Commission, may include this report as a separate section of its transaction summary for the third calendar quarter of 2000. If the purchaser does not otherwise file quarterly transactions summaries, it should file this report with the Commission by October 31, 2000.[7]

2. There may be opportunities during the upcoming summer for public utilities to make demand-side arrangements with their wholesale customers. For example, some wholesale requirements customers may have the ability to enter arrangements with their own retail customers to reduce load or obtain power from an industrial generator. Or, a partial requirements customers may have access to generating capacity on its own system. We want to ensure that public utilities will be able to work with their customers to negotiate mutually beneficial arrangements on short notice should the need arise during periods of peak summer demand or should other events occur that affect system reliability. Since time may be of the essence as these opportunities are discovered and negotiated, we find good cause to waive the FPA's prior notice requirement for any rate schedule amendments that may be required to effect these types of arrangements. Thus, to the extent a mutually agreeable DSM alternative changes the terms and conditions of a contract within our jurisdiction, we will grant waiver of the filing of prior notice of the change. By October 31, 2000, the public utility supplier must amend the filed rate schedule. The filing must consist of a report containing the following information: the FERC rate schedule numbers, the load reduction negotiated under the DSM arrangement (MW/MWh), total compensation, and the name of each affected wholesale customer.

3. While most power sales are currently transacted under market-based rates, there are occasions when utilities continue to operate under cost-based rates. Often, these cost-based rate incorporate formulas that are intended to track the actual out-of-pocket (*i.e.*, incremental) cost that was incurred to generate or purchase the energy. During periods of generation shortage, some utilities may be in a position to engage in DSM transactions with their wholesale and retail requirements customers in order to free up capacity for resale to neighboring utilities. These transactions will not take place unless any DSM expenditures can also be recovered under the rate formula, as are all other out-of-pocket costs. However, most rate schedules define out-of-pocket or incremental cost in terms of expenses incurred to generate power, rather than costs incurred to compensate a preexisting customer to reduce load. A few jurisdictional utilities have amended their cost-based pricing formulas to recognize the fact that DSM costs are a form of out-of-pocket or incremental cost.[8] In order to eliminate any disincentive to rely on DSM as a source of supply during generation shortages, we clarify that DSM costs should be treated consistently with all other types of incremental and out-of-pocket costs.

4. In prior orders, we have noted that the deductions from ATC to reflect reliability needs (Capacity Benefit Margin or CBM) can often be reduced in the near-term as the transmission provider gains certainty as to whether the assumptions underlying the CBM computation have, in fact, materialized.[9] The Commission takes this opportunity to remind transmission providers that they are required to reassess CBM assumptions for the current period and determine whether they have, in fact, materialized, *e.g.*, load, temperature and generation outages.[10] Another element of the ATC calculation is the Transmission Reliability Margin (TRM), *i.e.*, transmission capacity that is set aside to account for the inherent uncertainty in system conditions and the need for operating flexibility to ensure reliable system operation as system conditions change.[11] Since the assumptions underlying TRM calculations similarly become more certain in the near-term, we expect transmission providers to engage in the same periodic reassessment of TRM needs. Any changes in CBM and TRM must, of course, be reflected in recalculated ATC. By keeping both CBM and TRM set-aside values up to date, OASIS postings will be more accurate. Accurate ATC is crucial to facilitating power sale transactions that can relieve stresses on the Nation's electric systems.

5. The Commission will be responsive throughout the summer period to suggestions and questions regarding actions that relate to electric system reliability. The Commission is directing its staff to assist with regulatory questions related to practical ideas about what the Commission can do to support the electric industry's efforts with respect to reliability issues. The Commission staff, including the Hotline staff, will be available to respond to questions and suggestions in this regard.

Actions Others Could Take

There are likely other actions that could be taken, either by industry participants or state regulators, that could alleviate potential reliability problems during this summer. These include using demand-side management and applying market mechanisms to stimulate demand-side response; eliminating any regulatory disincentives to customers' integrating on-site supply and demand solutions; promoting energy efficiency; and improving coordination and preparation for electricity emergencies.[12] Where the Commission does not have a direct role in such matters, we seek suggestions from state authorities and industry organizations as to how we could assist in these, or other, areas.

Request for Comments

The Commission seeks the views of industry participants, organizations, and state regulatory authorities on the actions identified herein and on identifying what other short-term measures the Commission and others could take to alleviate reliability stress during peak periods.

For example, in the short term, are there any Commission regulations that

[6] Although we are asking all wholesale purchasers who seek to take advantage of these special procedures to file these reports, it is not our intent to assert jurisdiction over any wholesale purchaser who is not otherwise subject to our jurisdiction, and the submission of such reports will not alter a purchaser's jurisdictional status.

[7] These streamlined procedures are offered as an option. Any jurisdictional seller may also follow standard filing requirements if desired.

[8] *See, e.g.,* Wisconsin Electric Power Company, Docket No. ER99–2180–000.

[9] Capacity Benefit Margin in Computing Available Transmission Capacity, 88 FERC ¶ 61,099 (1999) (*CBM Order*).

[10] *CBM Order* at 61,237.

[11] NERC White Paper, *Transmission Capability Margins and Their Use in ATC Determination*, 4 (June 17, 1999).

[12] We also understand that the National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee on Electric Reliability has various projects underway that are looking into such matters as distribution system vulnerability to summer heat and peak loading, and interconnection of distributed generation.

the Commission should consider waiving to facilitate electricity commerce during periods when electricity markets are stressed? Can the Commission do more in the short-term to facilitate interconnections? We note that the Public Utilities Commission of Ohio has opened an inquiry into the readiness of its electric utilities to respond to higher demands for electricity this summer.[13] Is there anything the Commission should do to support such efforts?

In addition, while our request for comments is directed primarily toward interim initiatives to alleviate reliability concerns for this summer, would it be useful for the Commission to convene a public conference later in the year to discuss longer-term initiatives relating to electric system operation during peak demand periods? Are there longer-term initiatives that the Commission should consider, such as initiating a review of regional market rules with the goal of clarifying aspects that are ambiguous? The Commission is interested in hearing from such organizations as state regulatory authorities, trade groups, independent system operators, and the North American Electric Reliability Council as to what longer-term measures they or the Commission should consider to deal with reliability stresses.

We request that any comments on short-term interim measures be submitted to us by June 2, 2000. Such comments should be concise and specifically focused on either the specific actions implemented in this Notice or other specific actions capable of being accomplished in the short term. We request that any comments on longer-term initiatives or actions be submitted to us by June 30, 2000. Interested persons should submit an original and 14 copies of any comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should reference Docket No. EL00–75–000.

The Commission orders:

(A) For entities meeting the qualifications set forth in Paragraph 1 of this Notice, and who satisfy the reporting requirements set forth in that Paragraph, the following advance waivers and authorizations are hereby granted for the period beginning the date of this Notice until September 30, 2000:

(1) The prior notice requirement of section 205 of the Federal Power Act is hereby waived.

(2) Waiver is hereby granted for Parts 35, 41, 101, and 141 of the Commission's regulations.

(3) Authorization is hereby granted to issue securities and assume obligations and liabilities, provided that such issue or assumption is for some lawful object within the corporate purposes of the eligible entities, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(4) The full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving any eligible entity. Any such person instead shall file a sworn application providing the following information:

(a) full name and business address; and

(b) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(B) The prior notice requirement for rate schedule changes described in Paragraph 2 of this Notice is hereby waived, conditioned on the public utility complying with the filing requirements set forth in that Paragraph.

By direction of the Commission. Commissioner Hebert concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

Notice of Interim Procedures To Support Industry Reliability Efforts and Request for Comments

[Docket No. EL00–75–000]
Issued May 17, 2000.

HEBERT, Commissioner, *concurring*

I certainly agree with my colleagues that the Commission's actions should promote the continued reliability of the electric power system. And I agree that the Commission should take affirmative steps, to the extent consistent with its jurisdictional authority, to enhance the reliability of the system this summer and future summers. Because today's notice does not appear to hurt our reliability efforts, and might offer some slight marginal benefit, I concur with its issuance.

But I write separately to lament the lost opportunity this notice represents. Unfortunately, the Commission today offers little that will significantly enhance the reliability of the electrical grid. The Commission could be doing so much more to address the perceived problem. All today's notice actually accomplishes is to announce that the Commission is doing its job, and deflect blame for any disruptions this summer to Congress. In my judgment, any blame should be directed at this Commission for not taking decisive action last summer and two summers ago, and in all previous seasons, to promote capital investment in our energy infrastructure and new entry into emerging competitive markets.

I find peculiar the timing of today's notice. In the 2½ years I have served as Commissioner, the Commission has refrained from moving too ambitiously and directly into the reliability arena. I have admired the Commission's restraint. For example, the Commission admirably resisted the temptation to demonstrate its regulatory muscle in responding to the Midwestern ''price spikes'' during the summer of 1998. Despite pleas from some that temporarily high prices suggested a system on the verge of collapse, the Commission resisted the urge to intercede into emerging competitive wholesale markets by, among other things, developing reliability and financial integrity standards.

Rather, the Commission historically has left matters of reliability to the true experts in the field—the North American Electric Reliability Council, the various regional reliability councils around the country, and all affected industry participants. Realizing that the issue of reliability is complex and requires intimate familiarity with local facilities and institutions, the Commission historically has left this matter to industry-led groups, working in concert with all affected stakeholders. The Commission has interceded only when its review of reliability-based practices was necessary to ensure the availability and quality of open access transmission service. Recent orders, such as those addressing the issue of ''tagging'' customer requests for service and the circumstances in which utilities may invoke line loading (i.e., curtailment) procedures when the system is oversubscribed, attest to the Commission's limited role.[1] Another order, involving the Western Systems Coordinating Council, attests to the Commission's willingness to support regional industry and stakeholder efforts to promote mandatory compliance

[13] *See supra* note 1.

[1] *See, e.g.,* Coalition Against Private Tariffs, 83 FERC ¶ 61,015, *reh'g denied,* 84 FERC ¶ 61,050 (1998); North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998), *order on reh'g,* 87 FERC ¶ 61,161 (1999).

(through contracts) with reliability standards.[2]

In my opinion, little operationally has changed to motivate the Commission to take a more activist role on reliability. I suspect the real reason for the Commission's enhanced interest is politics and public opinion. Today's newspapers are ablaze with headlines screaming of looming energy crises and impending blackouts and brownouts. Much of this hysteria, unfortunately, has been fed by the Clinton/Gore Administration. Indeed, in a front page article in the Wall Street Journal, dated May 11, 2000, captioned ''Gloom and Doom: New Rules, Demands Put Dangerous Strain on Electricity Supply,'' the Secretary of Energy is quoted as saying that the United States has ''the grid of a Third World nation.'' [3]

I am not so pessimistic. The United States long has enjoyed the most reliable electrical delivery system in the world. The advent of competitive markets and increasing reliance on competitive forces—rather than command and control regulatory policies—to regulate energy markets do not alter this judgment.

It is true that increased competition, and the emergence of a myriad of market participants and offerings, is placing strains on a electrical network that was not designed for such competitive forces. I agree with the rest of the Commission, as well as Secretary Richardson, that something more should be done to enhance reliability and to avoid unexpected outages. I simply disagree as to the means to accomplish this result.

Today's notice offers various measures intended to promote supply, enhance deliverability, and temper demand. My personal opinion is that offering market-based rates to the owners of on-site generation will introduce precious few megawatts into the interstate grid. Demand-side measures to conserve energy are almost entirely within the purview of the states.[4] Transmission providers already have an obligation to update periodically their calculation and posting of available transmission capability. And Commission staff, identified to ''assist with regulatory questions related to practical ideas'' about reliability, will have limited ability to offer any real help.

My strong preference would be for the Commission, if now inclined to act on reliability, to take decisive action in an area that clearly lies within its existing jurisdiction—the pricing of wholesale power and transmission services. As I have been advocating ever since I first came to the Commission, the Commission has within its jurisdiction the ability to promote reliability—if it really means what it now states. For starters, if the Commission is serious about increasing generation supply, it should act *immediately* to withdraw all price caps in generation markets. I have, unfortunately, written in dissent on many occasions as to the harmful supply effects of price caps.[5] They distort price signals and inhibit entry into competitive markets. By facilitating efforts to minimize short-term price disruptions, and placing regulatory shackles on what should be competitive markets, the Commission is inhibiting precisely the type of investment in the grid that it claims it is now supporting—and that is crucial to assuring true electrical reliability.

Another important means of enhancing reliability is to give transmission providers an incentive to provide reliable, efficient service. Conventional pricing methods provide no such incentive. It is my strong preference to afford utilities some type of performance-based measure of accountability to their customers and their regulators. Consistent with its existing authority, the Commission could—and should—tie earnings and profits to reliability-based and performance-based criteria (such as the number and duration of service interruptions, customer satisfaction, and throughout).

Despite my urgings, the Commission has refused to adopt performance-based pricing measures. I was tremendously gratified when the Commission made its first tentative moves in this direction when it adopted its Order No. 2000 rulemaking on the development of regional transmission organizations. As the Commission explained, a RTO that meets the enumerated characteristics and functions—and that has demonstrated a commitment to promote grid reliability and efficiency—will be eligible for a number of incentives. These incentives include performance-based rates, accelerated depreciation, and return on equity enhancements (formula and risk-based).

While I appreciate the Commission's baby steps on performance-based pricing, it will take awhile for RTOs to develop, win the Commission's approval, and qualify for innovative pricing. If it were up to me, I would adopt pricing measures *now* that would give both regional and individual transmission providers an incentive to minimize or eliminate service disruptions this summer and future summers.

I can think of numerous other measures the Commission can adopt to promote reliability, without delay and without additional authority conferred by Congress. The Commission could afford transcos an additional incentive to build transmission facilities by providing a higher rate of return on transmission assets. The Commission could articulate greater receptivity to proposals to build and invest in merchant transmission facilities. The Commission could pique additional interest in investment and corporate restructuring by allowing acquisition adjustments on the sale of transmission assets that confers benefits on ratepayers.

In addition, the Commission could greatly advance the cause of reliability by indicating its support for stand-alone transmission companies. (In another order on today's agenda, I express serious concern as to the Commission's rejection of the proposed ownership structure for the proposed Alliance transco.) [6] As I have oft-stated, a transco—much more so than any other type of regional institution—has a strong economic incentive to provide reliable and efficient service. I wish the Commission would give a transmission company the chance to operate—and give an unequivocal green light to other utilities that might be considering participation in similar for-profit ventures.

And the Commission—if truly committed to providing supply alternatives—could do much more to promote the development of hydroelectric facilities and the construction of natural gas transmission facilities.[7] The answer to our nation's energy reliability needs lies not in the development of additional regulatory bodies and responsibilities—as the Administration, with the acquiescence of a majority of this Commission, now argues. Rather, the answer lies in

---

[2] *See* Western Systems Coordinating Council, 87 FERC ¶ 61,060 (1999).

[3] A Department of Energy report, providing documentation for the Secretary's opinion, is cited in footnote 1 of today's notice.

[4] My experience as a state commissioner shows the difficulty of creating effective DSM programs. I am skeptical of the hasty decision the notice makes on guaranteeing DSM cost recovery.

[5] *See* ISO New England, Inc., 88 FERC ¶ 61,316 at 61,973–74 (1999); California Independent System Operator Corporation, 89 FERC ¶ 61,169 at 61,513–15 (1999); ISO New England, Inc.; New England Power Pool, 90 FERC ¶ 61,170 at 61,555–57 (2000).

[6] *See* Alliance Companies, *et al.,* 91 FERC ¶ ___ (2000).

[7] *See, e.g.,* Independence Pipeline Company, *et al.,* 91 FERC ¶ ___ (2000) (dissenting statement).

promoting policies that encourage capital investment in all types of energy technologies and that allow competitive markets to operate as they should.

I recognize that certain of my suggestions, to some, might fall into the category of ''long-term'' measures that, even if implemented immediately, would not help this upcoming summer. Of course, if the Commission had adopted such reliability-based measures in prior years, it would not have realized the urgency to issue today's notice. And further delay merely exacerbates the conditions identified in the notice. For this reason, I do not see the advantage of differentiating between short-term and long-term fixes, or awaiting the filing of comments on the subject. Nor do I see any value in convening a ''public conference'' on the subject of reliability initiatives. The Commission held such a conference in February of 1998, and has since received numerous comments and pleadings on the topic.

In short, there's not need to await further action by Congress. The Commission already has all the authority it needs to effect real reform that will promote reliable and efficient utility service. And there is no need to delay to allow for further grandstanding by industry participants. By this point, after several summers of experience under competitive markets, we all know the way to promote reliability and efficiency—by encouraging investment and by allowing competitive markets to operate.

Therefore, I respectfully concur.

Curt L. Hebert, Jr.,

Commissioner.

[FR Doc. 00–13008 Filed 5–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Transmission Service on the Central Arizona Project 115–kV and 230–kV Transmission Lines

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration's (Western) Desert Southwest Customer Service Region (DSW) is proposing rate methodologies to calculate the rates for firm point-to-point transmission service, nonfirm point-to-point transmission service, and Network Integration Transmission Service (NITS) on the Central Arizona Project (CAP) 115–kV and 230–kV transmission lines. The proposed calculated rates will provide enough revenue to pay all annual costs, including interest expense, and repay the required investment within the allowable period. The proposed rate methodologies are scheduled to go into effect on October 1, 2000, and will remain in effect through September 30, 2005. This **Federal Register** notice initiates the formal process for these proposed rate methodologies.

DATES: The consultation and comment period will begin from the date of publication of this **Federal Register** notice and will end August 22, 2000. DSW will present a detailed explanation of the proposed rate methodologies and will make available a rate brochure at a public information forum scheduled for June 16, 2000, beginning at 10 a.m. MST, at the DSW office. Western will receive oral and written comments at a public comment forum on July 17, 2000, beginning at 10 a.m. MST, also to be held at the DSW office.

ADDRESSES: Written comments are to be sent to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, or by e-mail: carlson@wapa.gov. Western should receive written comments by the end of the consultation and comment period to be assured consideration. Western's DSW office, is located at 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: The CAP 115–kV and 230–kV transmission lines have been used almost exclusively to provide power to the CAP water pumps. The planned construction of a number of independent power plants in Arizona and Nevada creates a potential demand for use of surplus transmission capacity on the CAP 115–kV and 230–kV transmission lines.

The proposed rate methodologies for point-to-point transmission service and NITS on the CAP 115–kV and 230–kV transmission lines are based on a revenue requirement that recovers the CAP 115–kV and 230–kV transmission lines costs for facilities associated with providing transmission service and the non-facilities costs allocated to transmission service. The methodology for calculating the rates for point-to-point transmission service on the CAP 115–kV and 230–kV transmission lines is determined by combining the annual amortization costs with the annual operations and maintenance costs, divided by the annual average contract rate of delivery. Implementing the proposed rate methodology results in a firm point-to-point CAP 115BkV and 230–kV transmission line rate of $8.37 per kilowattyear and a nonfirm point-to-point CAP 115–kV and 230–kV transmission line rate of 0.96 mills/kWh.

NITS allows a transmission customer to integrate, plan, economically dispatch, and regulate its network resources to serve its native load in a way comparable to how a transmission provider uses its own transmission system to service its native load customers. The monthly charge methodology for NITS on the CAP 115–kV and 230–kV transmission lines is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis (12CP). The customer's load-ratio share is equal to that customers' hourly load coincident with the CAP 115–kV and 230–kV transmission lines monthly transmission system peak divided by the resultant value of the CAP 115–kV and 230–kV transmission lines monthly transmission system peak minus the CAP 115–kV and 230–kV transmission lines coincident peak for all firm point-to-point transmission service plus the CAP 115–kV and 230–kV transmission lines firm point-to-point transmission service reservations.

The proposed rate methodologies include the costs for scheduling, system control, and dispatch service.

These rate methodologies for transmission service on the CAP 115–kV and 230–kV transmission lines are being set following the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; and (2) the authority to confirm, approve, and place into effect

on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve and place such rates into effect on an interim basis to the Deputy Secretary.

Existing Department of Energy procedures for public participation in power rate adjustments are located at 10 CFR part 903 effective on September 18, 1985 (50 FR 37835). Since the proposed rates constitute a major rate adjustment as defined in 10 CFR 903.2, both a public information forum and a public comment forum will be held. After reviewing public comments, Western will recommend the proposed rate methodologies be approved on an interim basis by the Deputy Secretary.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western in developing the proposed rate methodologies will be made available for inspection and copying at the DSW office, located at 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking that particularly applies to rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: May 15, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–13087 Filed 5–23–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00651; FRL–6551–6]

Minimum Risk Pesticides Exempted Under FIFRA Section 25(b); Clarification of Issues; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice clarifies several aspects of the exemption for minimum risk pesticides by the FIFRA section 25(b) rule, including composition, labeling, food tolerances, and state regulation. It is being issued to answer questions frequently asked of EPA about such products. Registration (PR) Notice 2000–6, Entitled ''Minimum Risk Pesticides Exempted under FIFRA Section 25(b); Clarification of Issues,'' provides guidance to the registrant concerning frequently asked questions regarding section 25(b) and is effective now but comments will be accepted for 30 days, after which the Agency may revise the notice.

DATES: Comments, identified by docket control number OPP–00651, must be received on or before June 23, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00651 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Brian Steinwand (7511C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7973; fax number: (703) 308–7026; e-mail address: steinwand.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are interested in section 25(b) exempted products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register—**Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request a faxed copy of the PR Notice Entitled ''Minimum Risk Pesticides Exempted under FIFRA Section 25(b); Clarification of Issues,'' by using a faxphone to call (202) 401–0527 and selecting item 6130. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00651. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is

available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00651 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00651. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Guidance Does This PR Notice Provide?

Except in very limited circumstances, any substance that makes a pesticidal claim must be registered by EPA before it can be legally sold or distributed. One such exemption to the registration requirement is for those pesticides under section 25(b) of FIFRA. In 1996, EPA exempted certain minimum risk pesticides from FIFRA requirements if they satisfy certain conditions. EPA exempted the products described in 40 CFR 152.25(g) in part to reduce the cost and regulatory burdens on businesses as well as the public for pesticides posing little or no risk, and to focus EPA's limited resources on pesticides which pose greater risk to humans and the environment. To qualify for an exemption as a minimum risk pesticide, each active ingredient in the pesticide product must be listed in 40 CFR 152.25(g)(1). In addition, 40 CFR 152.25(g)(2) provides that these pesticide products may only contain minimal risk inert ingredients listed in List 4A. The PR Notice is intended to answer frequently asked questions regarding composition, labeling, food tolerances, and state regulation.

B. Why Is a PR Notice Guidance and Not a Rule?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment, if necessary. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is allowing comment so that it can make fully informed decisions regarding the content of this guidance.

The ''revised'' guidance will not be an unalterable document. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 5, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–12960 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 15, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form Number: FCC 318.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions; state, local or tribal government.

Number of Respondents: 2,500.

Estimated Time per Response: 1 hour 30 minutes.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 3,750.

Total Annual Costs: $0.

Needs and Uses: FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The data is used by FCC staff to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee and to ensure that the public interest would be served by grant of the application.

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 98–171.

Form Number: FCC Form 499.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 5500.

Estimated Time Per Response: 7.2 Hours (avg.).

Total Annual Burden: 40,000 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual; semi-annual.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. All contributors to the federal universal service support mechanisms must file the Telecommunications Reporting Worksheet, FCC Form 499. The information is used to calculate carriers' contributions.

OMB Control Number: 3060–0816.

Title: Local Competition and Broadband Report, CC Docket No. 99–301.

Form Number: FCC Form 477.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 510.

Estimated Time Per Response: 58.67 Hours (avg.).

Total Annual Burden: 29,924 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Semi-annually.

Needs and Uses: FCC Form 477 seeks to gather information on the development of local competition and deployment of broadband service also known as advanced telecommunications services. The data is necessary to evaluate the status of developing competition in local exchange telecommunications markets and to evaluate the status of broadband deployment. The information will be used by the Commission staff to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996.

OMB Control Number: 3060–0292.

Title: Part 69—Access Charges.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 1458.

Estimated Time Per Response: 23.19 Hours.

Total Annual Burden: 33,825 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0

Frequency of Response: On occasion; semi-annually; one-time reporting; recordkeeping.

Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association. The information is used to complete charges in tariffs for access service (or origination and termination) and to computer revenue pool distributions.

OMB Control Number: 3060–0298.

Title: Tariffs (Other Than Tariff Review Plan)—Part 61.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 2000.

Estimated Time Per Response: 341.2 Hours (avg.).

Total Annual Burden: 682,555 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annual; biennially; Third Party Disclosure.

Needs and Uses: Part 61 is designed to ensure that all tariffs filed by common carriers are formally sound, well organized, and provide the Commission and the public with sufficient information to determine the justness and reasonableness as required by the Communications Act of 1934, as

amended, of the rates, terms and conditions in those tariffs.

OMB Control Number: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form Number: FCC Forms 465, 466, 466–A, 467, 468.

Type of Review: Extension.

Respondents: Business or other for profits; not for profit institutions.

Number of Respondents: 5255.

Estimated Time Per Response: 1.8 Hours (avg.).

Total Annual Burden: 9755 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; recordkeeping.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, including FCC Forms 465, 466, 466–A, 467 and 468. The information reported is used to ensure that universal service support is distributed to telecommunications carriers serving eligible health care providers pursuant to 47 CFR part 54.

OMB Control Number: 3060–0511.

Title: ARMIS Access Report.

Form Number: FCC Report 43–04.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 150.

Estimated Time Per Response: 621 Hours.

Total Annual Burden: 93,150 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Needs and Uses: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations and access charges.

OMB Control Number: 3060–0512.

Title: The ARMIS Annual Summary Report.

Form Number: FCC Report 43–01.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 150.

Estimated Time Per Response: 135 Hours.

Total Annual Burden: 20,250 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Needs and Uses: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carriers and to perform routine analyses of costs and revenues on behalf of the Commission.

OMB Control Number: 3060–0513.

Title: ARMIS Joint Cost Report.

Form Number: FCC Report 43–03.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 150.

Estimated Time Per Response: 83 Hours.

Total Annual Burden: 12,450 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Needs and Uses: The Joint Cost Report is needed to administer our Part 64 joint cost rules and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of nonregulated operations by the regulated operations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13036 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Wireless Medical Telemetry Service (ET Docket 99–255).

Type of Review: New collection.

Respondents: Business or not for profit institutions.

Number of Respondents: 2500.

Estimated Hours Per Response: 4.

Frequency of Response: Recordkeeping; one time reporting requirement.

Estimated Total Annual Burden: 10,000 hours.

Total Annual Cost: $500,000.00.

Needs and Uses: The Commission adopted a Notice of Proposed Rule Making, to create a Wireless Medical Telemetry Service (''WMTS'') (ET Docket No. 99–255). If the WMTS were licensed by rule, there would be no record of which frequencies are used by each facility or device. This could result in interference if multiple parties located closely together attempted to use the same frequencies. Therefore, the Commission proposes the appointment of a frequency coordinator, who will maintain a database of all WMTS equipment in operation. All parties using equipment in the WMTS would be required to coordinate/register their operating frequency and other relevant technical operating parameters with a coordinator designated by the Commission. This proposal would assist WMTS users in avoiding interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13037 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 15, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0921.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 8 Hours (avg.).

Total Annual Burden: 160 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced services on a reasonable and timely basis are requested to include information in accordance with specified criteria. The Commission will use this information to review the petitions. The petitioning BOC is required to serve its state commission with a copy of the petition.

OMB Control Number: 3060–0681.

Title: Toll-Free Service Access codes—CC Docket No. 95–155(47 CFR Part 52, Subpart D, Sections 52.101–52.111).

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 168.

Estimated Time Per Response: 15 Hours (avg.).

Total Annual Burden: 2520 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Responsible Organizations (RespOrgs) who wish to make a specific toll free number unavailable must submit written requests to the toll free database administrator. The request shall include the appropriate documentation of the reason for the request.

OMB Control Number: 3060–0579.

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 16.

Estimated Time Per Response: 124.7 Hours (avg.).

Total Annual Burden: 1996 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Local exchange carriers are required to make tariff filings to provide new switched transport expanded interconnection services and to comply with Commission standards governing nonrecurring charges.

OMB Control Number: 3060–0577.

Title: Expanded Interconnection with Local Telephone Company Facilities.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 16.

Estimated Time Per Response: 15 Hours (avg.).

Total Annual Burden: 240 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Local exchange carriers are required to make tariff filings to provide public notice of fresh look opportunity at their offices and to comply with Commission standards governing nonrecurring reconfiguration charges, expanded interconnection connection charge rate structure and fresh look.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13038 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 17, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 23, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0233.

Title: Part 36, Separations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, Local, or Tribal Governments.

Number of Respondents: 1,500.

Estimate Time Per Response: 2 to 22 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 157,125 hours.

Total Annual Costs: None.

Needs and Uses: In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to support, each incumbent local exchange carrier must make certain annual and/or quarterly data reports to the National Exchange Carrier Association. State or local telephone companies which want to participate in the federal assistance program must make certain informational showings to demonstrate eligibility.

OMB Control Number: 3060–0774.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, 47 CFR part 54.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local, or Tribal Governments.

Number of Respondents: 5,565,451.

Estimate Time Per Response: 2 to 4 hours.

Frequency of Response: On occasion, quarterly, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 1,787,278 hours.

Total Annual Costs: None.

Needs and Uses: Congress directed the FCC to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. section 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience, and necessity, and are consistent with the Communications Act of 1934, as amended. Part 54 promulgates the rules and requirements to preserve and advance universal service. The collections are necessary to implement section 254.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13032 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 18, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 23, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Section 95.1215, Disclosure Policies and Section 95.1217, Labeling Requirements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 20.

Estimated Time Per Response: 1 hour.

Frequency of Response: Third party disclosure requirement .

Total Annual Burden: 20 hours.

Total Annual Cost: N/A.

Needs and Uses: The information collection contained in Sections 95.1215 and 95.1217 require manufacturers of transmitters for the Medical Implant Communications Service (MICS) to include with each transmitting device a statement regarding harmful interference and to label the device in a conspicuous location on the device. The requirements will allow use of potential life-saving medical technology without causing interference to other users of the 402–405 MHz band.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13035 Filed 5–23–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Tuesday, May 30, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13125 Filed 5–22–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00059]

Prevention Epicenters Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Prevention Epicenters. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010'', a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Access to Quality Health Services and Immunization and Infectious Diseases. For the conference copy of ''Healthy People 2010'', visit the internet site http://www.health.gov/healthypeople.

The purpose of the program is to assist healthcare organizations and institutions to support established Prevention Epicenters or to develop new Prevention Epicenters as part of the CDC's Prevention Epicenters (PE) program. The PE program is designed to develop, implement, and evaluate the effectiveness of epidemiologically-based strategies to improve healthcare quality and assure patient safety by preventing adverse events associated with healthcare including, but not limited to, healthcare-associated infections, and antimicrobial resistant infections. (See Attachment II Background for more information.)

The goals of the PE program are to: (1) Support activities which lead to improvements in information system capacity to monitor healthcare system performance and healthcare outcomes. Such activities should expand the use of information technology to acquire, integrate, process, analyze, and report information, and use information technology to develop and implement innovative interventions to prevent infections and other adverse health events; (2) be a national resource for building epidemiologic capacity in healthcare outcomes research. PE program activities should extend the capacity of healthcare epidemiology and infection control programs to address patient safety, cost effectiveness, prevention effectiveness, healthcare outcomes monitoring, and performance measurement; and (3) support activities which develop an infrastructure to address the above goals in the broadest spectrum of healthcare delivery settings, including acute care hospitals, long-term care facilities, rehabilitation programs, dialysis centers, home healthcare programs, ambulatory care programs, and others.

Specific objectives for the pilot and developmental phases of the project will include identifying (1) appropriate populations, (2) outcome measures, (3) data collection methods, and (4) interventions to be instituted in year 2 of the project.

Each Prevention Epicenter will be established within a healthcare network or system, integrated healthcare delivery system (IDS), or managed care organization (MCO) which serves a large and diverse group of people. Through the network, system, or organization, the Prevention Epicenter should have access to patients in a variety of healthcare settings (*e.g.,* long-term care, rehabilitation, home health care, ambulatory care, dialysis centers, etc.). The population served by the components of the system should be definable based on the network's, system's, or organization's knowledge of historical patterns of use of services by patients and/or the demographics of enrollment in managed healthcare plans served by the network, system, or organization. Prevention Epicenters will work together as part of a national multi-center collaborative research and demonstration program in the areas of patient safety and healthcare outcomes research.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $2,000,000 is available in FY 2000 to fund approximately 10 awards (up to eight competing continuations and one or two new Prevention Epicenters). It is expected that the average award for the existing Prevention Epicenters will range from approximately $100,000 to $450,000, depending on the activities funded per site, and the average award for new Prevention Epicenters will range from approximately $75,000 to $250,000. More funds are available for existing Prevention Epicenters because they are mature, fully-functional programs and new Prevention Epicenters might need up to 12 to 24 months to become fully-functional and able to participate in all activities.

It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

1. Although applications for new programs are encouraged, funding preference will be given to the competing continuation applications over applications for programs not already receiving support under the existing Prevention Epicenter program. The current awardees already have the infrastructure needed to continue the Prevention Epicenter program.

2. To achieve appropriate representation in the Prevention Epicenters program, funding preference may be given to approved applications that would enhance the racial, ethnic,

socioeconomic, and/or geographic diversity of the program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Establish and/or operate a Prevention Epicenter that is consistent with the purposes of the program.

b. Establish collaborative and cooperative relationships with other public and private organizations that have an interest in outcomes research, disease management, prevention effectiveness, prevention of adverse health outcomes, patient safety, and healthcare quality in order to maximize access to, and participation of, relevant study populations.

(1) Collaborate with other Prevention Epicenters to establish a PE program advisory committee and participate in the project planning activities.

(2) Collaborate with other Prevention Epicenters on one or two core program activities. Core program activities are defined as activities intended to become multicenter collaborative projects addressing the three goals of the PE program.

(3) Propose and conduct one or more investigator-initiated projects. Investigator initiated projects may address issues of local interest or concern that are in keeping with the goals of the PE program. In addition to focusing on defined patient populations, investigator-initiated projects may address issues that include, but are not limited to: healthcare personnel behavior modification, healthcare personnel safety, laboratory-based assessment and interventions, and the monitoring and control of antimicrobial resistance.

(4) Manage, analyze, and interpret data, and publish and disseminate important medical and public health information stemming from Prevention Epicenter projects in collaboration with other PE program sites.

(5) Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

2. CDC Activities

a. Collaborate, as appropriate, with the recipient in all stages of the program, and provide programmatic and technical assistance.

b. As requested, participate in data collection, analysis, and interpretation of data from Prevention Epicenter projects. Provide scientific collaboration.

c. As requested, participate in the dissemination of findings and information stemming from Prevention Epicenter projects.

d. Participate in improving program performance through consultation based on information and activities of other projects.

e. As requested, perform laboratory evaluation of specimens or isolates (*e.g.,* molecular epidemiologic studies, evaluation of diagnostic tools) obtained in Prevention Epicenter projects.

f. As requested, facilitate communication of data and results among Prevention Epicenters.

g. Assist in the development of research protocols for IRB review by all cooperating institutions participating in the research project.

The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should not be more than 25 single-spaced pages printed on one side, with one inch margins and unreduced font. Applications should follow the PHS 398 (rev. 4/98) application and Errata sheet, and should include the following information.

1. Submission of an application for at least two but no more than three project activities in total. Each activity proposal, including the proposed multicenter collaborative projects (core program activities), and investigator-initiated activities, should be clearly identified in a distinct portion of the Operational Plan. Although the activities proposed may address distinct issues and needs, they may be implemented in an integrated manner such that staff members work on more than one activity, or supplies and equipment are shared.

Note: Approximately 50–80 percent of resources will go to the core, multicenter collaborative activities.

2. Provide a line-item budget and narrative justification for all requested costs, and separate line-item budgets for each proposal submitted to conduct core program activities and investigator-initiated activities. Budgets should be consistent with the purpose, objectives and research activities, and include:

a. Line-item breakdown and justification for all personnel, *i.e.,* name, position title, annual salary, percentage of time and effort, and amount requested.

b. For each contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, (5) method of contractor selection (*e.g.,* sole-source or competitive solicitation) and (6) method of accountability.

c. A brief five-year budget projection should be submitted that clearly separates and distinguishes direct from indirect costs.

d. A description of any financial and in-kind contributions from nonfederal sources.

Additionally, for each proposed activity (core and investigator-initiated) include a one-page, single-spaced, typed abstract. The heading should include the title of the cooperative agreement, project title, organization, name and address, project director, and telephone number. This abstract should include a workplan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

F. Submission and Deadline

Letter of Intent

In order to enable CDC to determine the level of interest in the program announcement, a non-binding letter-of-intent to apply is requested from potential applicants. Your letter-of-intent should identify program announcement number 00059, and include the following information: (1) Name and address of institution, and (2) name, address, telephone number, e-mail address, and fax number of contact person. On or before June 9, 2000, submit the letter-of-intent (original and two copies) to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before July 11, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information Section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each competing continuation Prevention Epicenter and new application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Competing Continuation PE Centers

1. Establishment of Prevention Epicenter (30 points)

a. Productivity

Extent to which the competing continuation Center has used program resources to successfully conduct research and demonstration projects as evidenced by submission of abstracts to national scientific meetings; presentations at local, regional and national conferences, meetings, and other settings for information exchange; and publications in scientific journals, lay media, public or healthcare provider information and educational sources.

b. Institutionalization

Extent to which the Prevention Epicenter has been established within the home institution and network/system/organization as evidenced by collaboration with other departments, institutions, and components of the network/system/organization; support from officials and representatives of the home institution and networks; recognition in internal publications and documents; and collaboration as a Prevention Epicenter with entities outside the network/system/organization.

2. Existing Capacity (30 points)

Description of existing capacity to conduct outcomes research and prevention effectiveness research in the areas of healthcare-associated infections and other adverse events associated with healthcare.

a. Description of applicant's experience and documentation of accomplishments in conducting healthcare outcomes research and quality improvement activities, including projects and studies involving: database integration; outcomes data acquisition, validation, and analysis; cost-and resource-effectiveness and cost-utility assessment; performance measurement and performance improvement; quality of care assessment and intervention clinical and laboratory process and outcomes assessment; and provider and patient behavior change studies and interventions. (A list of relevant papers and abstracts should be included in an appendix.)

b. Description of applicant's experience and documentation of accomplishments in conducting surveillance, applied epidemiologic research, applied laboratory research, and prevention research in the areas of healthcare-associated infections and other adverse events (*e.g.,* antimicrobial drug resistant infections, device-related infections, medication errors, etc.) A list of relevant papers and abstracts should be included in an appendix.

c. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with medical, public health, laboratory, academic, and community organizations that are either public or private, local or regional. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

d. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., mentioned in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate each collaborator's willingness to participate in studies and other activities with the Prevention Epicenter. The letters should clearly define the roles of these collaborations.

e. Demonstration of applicant's ability to participate in multicenter research and demonstration studies.

3. Operational Plan (35 points)

a. The extent to which the applicant's plan for establishing, operating, and maintaining the Prevention Epicenter clearly describes the proposed activities and clearly identifies the roles and responsibilities of all participating individuals, agencies, organizations, and institutions.

b. The extent to which the applicant describes plans for collaboration with other PE program sites in the establishment and operation of the PE program and individual Prevention Epicenter projects, including participation in advisory committee and subcommittee activities, as well as project design/development (*e.g.,* protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of applicant's partnerships with necessary and appropriate individuals, departments, agencies and organizations for establishing and operating the proposed Prevention Epicenter projects.

d. Consistency of the proposed projects with regard to Prevention Epicenter program goals.

e. Description of the operational plan for conducting core multicenter collaborative projects, including the extent to which: (1) The project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; (3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

f. Description of the operational plan for conducting one or two investigator-initiated projects, including the extent to which: (1) The project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; (3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

g. Identification of applicant's key professional personnel to be assigned to the Prevention Epicenter and to specific projects as well as key professional personnel from other participating or collaborating institutions, agencies, organizations outside of the applicant's agency that will be assigned to PE activities (provide curriculum vitae for each in an appendix). Clear identification of applicants' respective roles in the management and operation of the Prevention Epicenter and in individual projects. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the Prevention Epicenter.

i. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority

populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation (5 points)

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the Prevention Epicenter and of individual Center projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

5. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

6. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

New Applicants

1. Understanding the objectives of the PE program (5 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the Prevention Epicenter.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the PE program.

2. Description of the healthcare network or system, IDS, or MCO in which the Prevention Epicenter is situated and the population served by the network/system/organization (10 points)

a. Clear definition of the components of the network/system/organization, their relationship to the Prevention Epicenter, the geographic area and the population base in which the Prevention Epicenter will operate.

b. Clear description of the populations served, the health care services provided, and the healthcare settings within which defined population(s) receive care, as they relate to the proposed activities of the PE program.

c. Clear description of the management information systems of the network/system/organization, with emphasis on the level of integration of patient level electronic data sources within and between facilities, including electronic data bases containing clinical, administrative, laboratory, pharmacy, and other data. Description of the availability and accessibility of such data for outcomes-type research.

d. Extent to which the population base is diverse demographically.

3. Description of existing capacity to conduct outcomes research and prevention effectiveness research in the areas of healthcare-associated infections and other adverse events associated with healthcare (35 points)

a. Description of applicant's experience and documentation of accomplishments in conducting healthcare outcomes research and quality improvement activities, including projects and studies involving: database integration; outcomes data acquisition, validation, and analysis; cost- and resource-effectiveness and cost-utility assessment; performance measurement and performance improvement; quality of care assessment and intervention clinical and laboratory process and outcomes assessment; and provider and patient behavior change studies and interventions. (A list of relevant papers and abstracts should be included in an appendix.)

b. Description of applicant's experience and documentation of accomplishments in conducting surveillance, applied epidemiologic research, applied laboratory research, and prevention research in the areas of healthcare-associated infections and other adverse events (*e.g.,* antimicrobial drug resistant infections, device-related infections, medication errors, etc.) A list of relevant papers and abstracts should be included in an appendix.

c. Demonstration of applicant's ability to develop and maintain strong cooperative relationships with medical, public health, laboratory, academic, and community organizations that are either public or private, local or regional. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

d. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., mentioned in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate each collaborator's willingness to participate in studies and other activities with the Prevention Epicenter. The letters should clearly define the roles of these collaborations.

e. Demonstration of applicant's ability to participate in multicenter research and demonstration studies.

4. Operational Plan (45 points)

a. The extent to which the applicant's plan for establishing, operating, and maintaining the Prevention Epicenter clearly describes the proposed activities and clearly identifies the roles and responsibilities of all participating individuals, agencies, organizations, and institutions.

b. The extent to which the applicant describes plans for collaboration with other PE program sites in the establishment and operation of the PE program and individual Prevention Epicenter projects, including participation in advisory committee and subcommittee activities, as well as project design/development (*e.g.,* protocols), management and analysis of data, and synthesis and dissemination of findings.

c. Description and quality of applicant's partnerships with necessary and appropriate individuals, departments, agencies and organizations for establishing and operating the proposed Prevention Epicenter projects.

d. Consistency of the proposed projects with regard to Prevention Epicenter goals.

e. Description of the operational plan for conducting core multicenter collaborative projects, including the extent to which: (1) the project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; (3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

f. Description of the operational plan for conducting one or two investigator-initiated projects, including the extent to which: (1) The project is consistent with one or more of the stated goals of the PE program, (2) the objectives of the proposed project are specific, measurable, and time-phased; 3) the plan clearly describes applicant's technical approach/methods for conducting the proposed project(s); and (4) the plan is adequate to accomplish the stated objectives.

g. Identification of applicant's key professional personnel to be assigned to the Prevention Epicenter and to specific

projects as well as key professional personnel from other participating or collaborating institutions, agencies, organizations outside of the applicant's agency that will be assigned to PE activities (provide curriculum vitae for each in an appendix). Clear identification of applicants' respective roles in the management and operation of the Prevention Epicenter and in individual projects. Descriptions of participants' experience in conducting work similar to that proposed in this announcement.

h. Description of all support staff and services to be assigned to the Prevention Epicenter.

i. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation (5 points)

a. Quality of plan for monitoring and evaluating scientific and operational accomplishments of the Prevention Epicenter and of individual Center projects.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

6. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

7. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress reports (semiannual);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

For this and other CDC announcements, please see the CDC home page on the Internet: http://www.cdc.gov (click on ''Funding''). To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Gladys Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number 770–488–2753, Email address gcg4@cdc.gov

For program technical assistance, contact: Steve Solomon, M.D., Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E. Mailstop A–07, Atlanta, GA 30333, Telephone number 404–639–6476, Email address sls1@cdc.gov

Dated: May 18, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13028 Filed 5–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00093]

States Helping States Through The Association of Food And Drug Officials; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention, (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for States Helping States Through the Association of Food and Drug Officials.

B. Eligible Applicant

Assistance will be provided only to the Association of Food and Drug Officials (AFDO). No other applications are solicited.

AFDO is the only organization qualified to conduct this work because:

1. AFDO is the only organization that represents the state and local food protection regulatory agencies. Regular members are official heads of State or local regulatory agencies or personnel under their supervision. The Association's principle purpose is to act as a leader and resource to state and local regulatory agencies in developing strategies to resolve and promote public health and consumer protection related to the regulation of foods as well as drugs, medical devices and consumer products.

2. AFDO focuses on the administration of the nation's food safety component of public health programs. AFDO has unique perspective on the infrastructure, capacity, strengths and needs of state and local food safety programs.

3. AFDO has experience in carrying out national training efforts that focus on the needs of state and local regulatory agencies.

C. Availability of Funds

Approximately $102,000 is available in FY 2000 to fund this Cooperative Agreement. It is expected that the award will begin on or about September 1, 2000, and will be made for a 12-month

budget period within a project period of up to 5 years.

D. Where To Obtain Additional Information

Program technical assistance may be obtained from: Chuck Higgins, Senior Environmental Health Officer, Environmental Health Services Branch, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Atlanta, GA 30341–3724, Telephone number: (770) 488–4180, Email address: cth4@cdc.gov

Business management technical assistance may be obtained from: Sonia V. Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2724, Email address: svp1@cdc.gov

Dated: May 18, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13029 Filed 5–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Quarterly List of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a quarterly update of all guidance documents issued and withdrawn since we compiled the last quarterly list of guidance documents that published on March 14, 2000. FDA committed to publishing quarterly updates in our February 1997 ''Good Guidance Practices'' (GGP's) document, which set forth the agency's policies and procedures for developing, issuing, and using guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued since the annual comprehensive list was compiled.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. For information on where to obtain single copies of guidance documents listed here, see the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its ''Good Guidance Practices'' (GGP's), which set forth our policies and procedures for developing, issuing, and using guidance documents. We adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of our guidance documents.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, we committed to publishing an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including ''Level 2'' guidance documents. The following list of guidance documents represents all guidances that we issued or withdrew since we published the last quarterly list on March 14, 2000 (65 FR 13771). The guidance documents are organized by the issuing center or office within FDA, and are further grouped by the intended users or relevant regulatory activities. Dates provided in the following list refer to the date the guidance was issued or, where applicable, the last date the document was revised. We provided document numbers where available.

II. Guidance Document Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft guidance entitled ''International Conference on Harmonsation of Technical Requirements for Registration of Pharmaceuticals for Human Use M4: Common Technical Document''	February 11, 2000	FDA Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within U.S.)or 301–827–3844 (outside U.S. and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Draft Guidance for Industry: Special Protocol Assessment	December 1999	Do	Do
Draft Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol	February 2000	FDA Personnel	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Industry: IND Meetings for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information	February 2000	FDA Regulated Industry	Do
Guidance for Industry: Formal Meetings With Sponsors and Applicants for PDUFA Products	February 2000	Do	Do
Guidance for Industry: Formal Dispute Resolution: Appeals Above the Division Level	February 2000	Do	Do
Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing	February 2000	Do	Do
Draft Guidance for Industry: Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank	March 2000	Do	Do

III. Guidance Documents Issued by the Center for Devices and Radiological Health (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Guidance for Industry and for FDA Staff: Enforcement Priorities for Single-Use Devices Reprocessed by Third Parties and Hospitals, Draft Guidance-Not for Implementation	February 8, 2000	Office of Compliance (OC)	Division of Small Manufacturers Assistance; 1–800–638–2041 or 301–827–0111 or FAX Facts-on-Demand 1–800–899–0381 Internet access: http://www.fda.gov/cdrh
Guidance for FDA Staff; Compliance Program Guidance Manual; Field Compliance Testing of Diagnostic (Medical) X-ray Equipment	March 15, 2000	OC/Division of Enforcement I (DOE1)	Do
Guidance for Industry and FDA; Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions	February 21, 2000	Office of Device Evaluation (ODE)	Do
Guidance on the Use of Standards in Substantial Equivalence Determination	March 12, 2000	Do	Do
Guidance Document for Premarket Notification Submission for Nitric Oxide Delivery Apparatus, Nitric Oxide Analyzer and Nitrogen Dioxide Analyzer	January 24, 2000	ODE/Division of Cardiovascular, Respiratory & Neurological Devices (DCRND)	Do
Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions	February 16, 2000	ODE/DCRND	Do
Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions	February 21, 2000	Do	Do
Guidance Document for the Preparation of IDEs for Spinal Systems (Replaces: Guidance Document for the Preparation of IDEs for Spinal Systems 8/26/98)	January 13, 2000	ODE/Division of General & Restorative Devices (DGRD)	Do
Guidance for the Arrangement and Content of a Premarket Approval (PMA Application for an Endosseous Implant	May 16, 1989	ODE/Division of Dental, Infection Control and General Hospital Devices (DDIGD)	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Guidance for Industry and FDA Reviewers: Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme (Replaces: Reprocessing and Reuse of Single-Use-Devices: Risk Categorization Scheme; Draft Guidance 12/9/99)	February 8, 2000	Do	Do
Guidance for Industry and for FDA Reviewers/Staff; Guidance for the Content of Premarket Notifications for Penile Rigidity Implants (Replaced: Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants 5/30/95)	January 16, 2000	ODE/Division of Reproductive Abdominal, ENT and Radiological Devices (DRAERD)	Do
Guidance for Manufacturers Seeking Marketing Clearance of Ear, Nose, and Throat Endoscope Sheaths Used as Protective Barriers (Replaces: Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims 10/21/96)	March 12, 2000	ODE/Division of Ophthalmic and Ear, Nose, Throat Devices (DOED)	Do
Draft Guidance for Industry; Guidance on Medical Device Patient Labeling	March 3, 2000	Office of Health and Industry Programs (OHIP)/Division of Device User Programs and Systems Anaylsis (DDUPSA)	Do
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including ''Instructions for Requests for Certificate to Foreign Governments'' (Replaces: The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including ''Instructions for Requests for Certificate to Foreign Governments'' 6/22/99)	February 7, 2000	OHIP/Division of Small Manufacturers Assistance (DSMA)	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2	February 25, 2000	OHIP/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket (Replaces: Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements 2/22/99)	February 2, 2000	Office of Surveillance and Biometrics (OSB)/Division of Postmarket Surveillance (DPS)	Do

WITHDRAWALS

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Guidance on Medical Device Tracking [FDAMA] Replaced by Guidance for Industry and FDA Staff-Guidance on Medical Device Tracking [FDAMA]	February 19, 1998	OC	January 24, 2000
Guideline for Preparing Notices of Availability of Investigational Medical Devices (Replaced by: Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects 3/19/99)	November 1, 1985	OC/BIMO	February 14, 2000

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Review Proposal for Reagents and Analyzer Systems	March 14, 1995	ODE	February 17, 2000
Implantable Pacemaker Lead Testing Guidance for the Submission of a Section 510(k) Notification (Replaced by: Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions 1/14/00)	September 1, 1989	ODE/DCRND	January 21, 2000
Determining Equivalence of Intraaortic Balloon Catheters Under the 510(k) Regulations	December 12, 1989	Do	April 7, 2000
510(k) Guidance for Screw Type Endosseous Implants for Prosthetic Attachment	August 11, 1992	ODE/DDIGD	April 5, 2000
Addendum to Guidance on the Content and Format of Premarket Notification [510(k)] Submissions for General Purpose Disinfectants	March 9, 1994	Do	February 15, 2000
Reprocessing and Reuse of Single-Use-Devices: Risk Categorization Scheme; Draft Guidance (Replaced by: Guidance for Industry and FDA Reviewers: Reprocessing and Reuse of Single-Use Devices: Review Prioritization Scheme Draft 2/8/00	December 9, 1999	Do	February 9, 2000
Draft Guidance on the Content and Format of Premarket Approval Application (PMA) for Sharps Needle Destruction Devices	February 11, 1997	Do	April 10, 2000
Sunglass Package; including Certification Statement for the Impact-Resistance Test of Lenses in Eyeglasses and Sunglasses	March 19, 1998	ODE/DOD	February 8, 2000
Guidance for Submission of a 510(k) Premarket Notification for an Air Conduction Hearing Aid	April 1, 1991	ODE/DRAERD	April 7, 2000
Draft Guidance for the Content of Premarket Notifications for Penile Rigidity Implants (Replaced by: Guidance for Industry and for FDA Reviewer/Staff; Guidance for the Content of Premarket Notifications for Penile Rigidity Implants 1/16/00)	May 30, 1995	Do	March 20, 2000
Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims (Replaced by: Guidance for the Content of Premarket Notification for Disposable, Sterile, Ear, Nose and Throat Endoscope Sheaths with Protective Barrier Claims 3/12/00)	November 21, 1996	Do	March 22, 2000
Draft Guidance to Hearing Aid Manufacturers for Substantiation of Claims	August 5, 1994	Do	April 14, 2000
Medical Device Reporting for Distributors	April 1, 1996	OHIP/DSMA	February 16, 2000
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2 (Replaced by Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #2 2/25/00)	March 5, 1999	OHIP/DMQRP	January 21, 2000

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
The FDA Export Reform and Enhancement Act of 1996/Export Certification Package including ''Instructions for Requests for Certificate to Foreign Governments''	June 22, 1999	Do	February 14, 2000
Import of Medical Devices—A Workshop Manual (FDA 93–4228)	March 1, 1993	Do	February 8, 2000
Guidance for Medical Gloves—A Workshop Manual FDA 97–4257 (Replaced by Guidance for Industry and FDA–Medical Glove Guidance Manual Draft FDA 99–4257)	September 1, 1997	Do	Do
Part I—FDA Structure and Functions Part II—Center for Devices and Radiological Health (CDRH) Structure and Functions/International Manual (Replaced by: U.S. FDA–Regulation of Medical Devices; Background Information for International Officials 4/14/99)	April 14, 1999	OHIP/DSMA	February 15, 2000
Part III—FDA's Regulation of Medical Devices/ International Manual (Replaced by: U.S. FDA Regulation of Medical Devices; Background Information for International Officials 4/14/99)	April 14, 1999	OHIP/DSMA	Do
Part IV—Electronic Access to FDA Guidance Documents and Information/International Manual (Replaced by: U.S. FDA–Regulation of Medical Devices; Background Information for International Officials 4/14/99)	April 14, 1999	OHIP/DSMA	Do
MDR Documents Access Information for CDRH Facts-On-Demand (FOD)	February 29, 1996	OSB	Do
MDR Documents Access Information for Industry Organizations	May 8, 1996	OSB	Do
Guidance for Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements	February 22, 1999	OSB/DPS	January 17, 2000

CORRECTIONS

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Group	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance on Premarket Notification [510(k)] Submissions for Automated Endoscope Washers, Washer/Disinfectors, and Disinfectors Intended for Use in Health Care Facilities (This document was mistakenly listed as ''withdrawn'' in the March 14, 2000 FEDERAL REGISTER	August 1, 1993	ODE/Division of General & Restorative Devices (DGRD)	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products	February 3, 2000	Generic Drug	Office of Training and Communication, Drug Information Branch, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, Internet access: http://www.fda.gov.cder/guidance/index.htm
IND Meetings for Human Drugs and Biologics; Chemistry, Manufacturing, and Controls information	February 4, 2000	Chemistry Draft	Do
Special Protocol Assessment	February 9, 2000	Modernization Act Draft	Do
Draft guidance entitled ''M4 Common Technical Document: Request for Comments on Initial Components''	February 11, 2000	ICH Draft—Joint Safety/Efficacy	Do
NDAs: Impurities in Drug Substances	February 25, 2000	Chemistry	Do
Formal Meetings With Sponsors and Applicants For PDUFA Products	March 7, 2000	Modernization Act	Do
Formal Dispute Resolution: Appeals Above the Division Level	March 7, 2000	Do	Do
OTC Treatment of Herpes Labialis with Antiviral Agents	March 8, 2000	Clinical/Medical Draft	Do
Conjugated Estrogens, USP: LC–MS Method for Both Qualitative chemical characterization and Documentation of Qualitative Pharmaceutical Equivalence	March 9, 2000	Biopharmaceutic Draft	Do
Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products	March 10, 2000	Modernization Act Draft	Do
Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank: Availability	March 29, 2000	Do	Do
Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act	March 30, 2000	Procedural	Do
Draft guidance entitled ''E11: Clinical Investigation of Medicinal Products in the Pediatric Population''	April 12, 2000	ICH Draft—Efficacy	Do

V. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs—Draft Guidance	January 2000	Animal Drug Industry	Communications Staff (HFV–12), FDA/CVM, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, Internet access: http://www.fda.gov/cvm FAX 301–594–1831

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry: Stability Testing for Medicated Premixes Guidance	March 2000	Do	Do

VI. Guidance Documents Issued by the Office of Regulatory Affairs (ORA)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Draft Guidance for Institutional Review Baords, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research.	March 30, 2000	Regulated Industry	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–857–0420 or Internet access at http://www.fda.gov/ora/compliance—ref/bimo__err—guide.htm
Compliance Policy Guide, Chapter 2, Sec.252.110, NEW: Volume Limits for Automated collection of Source Plasma	March 6, 2000	FDA Staff	Do Internet access at http://www.fda.gov/ora/compliance—ref/cpg/cpgbio/cpg252.110.htm
Compliance Policy Guide, Chapter 2, Sec. 257.100, REVISED: Deferral of source Plasma Donors Due to Red Cell Loss During collection of Source Plasma by Automated Plasmapheresis	March 22, 2000	Do	Do—Internet at http://www.fda.gov/ora/ compliance—ref/cpg/cpgbio/ cpg257.100.htm
Regulatory Procedures Manual, UPDATE/ REVISION: Chapter 4, Subchapter/ Warning Letters	March 21, 2000	Do	Do—Internet at http://www.fda.gov/ora/compliance—ref/rpm—new2/ch4.html
Investigations Operation Manual 2000	March 2000	Do	Division of Emergency and Investigational Operations (HFC–130) Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5636
Memorandum to Import Program Managers—Surveillance and Post Reconditioning Sampling of Bulk Spices for Pathogens	February 11, 2000	Do	Division of Import Operations and Policy (HFC–170), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 301–443–6553
Import Alerts	Continuously	Do	Freedom of Information staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville MD Internet at http:www.fda.gov/ora/fiars/ ora—import—alerts.html

WITHDRAWALS

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	Date Withdrawn
Compliance Policy Guide, Chapter 2, Sec. 215.100 (CPG 7134.07), IND Filings; Completion of Applicable Portions Prior to Final Action on License Applications or License Amendments	July 19, 1976	FDA Staff	March 28, 2000

Dated: May 17, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–12989 Filed 5–23–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AIDS Education and Training Centers' National HIV/AIDS Clinical Consultation Center Grant

AGENCY: Health Resources and Services Administration.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2000 grants for a discretionary grant to support an AIDS Education and Training Centers' National Clinical Consultation Center. The Center will be responsible for assisting medical providers in the treatment of persons with HIV infection and in management of health care workers who may have sustained occupational exposure to HIV and other blood borne pathogens commonly occurring in persons living with HIV infection (including Hepatitis B and C) through prompt, individualized, expert consultation. The Center will also link service users to education and training opportunities available through regional AIDS Education and Training Centers and provide technical assistance to these regional centers. The authority for this program is 2692 (a) of the Public Health Service Act as amended by Public Law 104–146, the Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

Availability of Funds

It is anticipated that a single recipient will be selected for the National HIV/AIDS Clinical Consultation Center and the award is expected to be $1,500,000 of the initial budget period. Funding will be made available for 12 months, with a project period of up to three years. Continuation awards within the approved project period will be made on the basis of satisfactory progress and the availability of funds.

Eligible Applicants

Eligible applicants are public and nonprofit entities and schools and academic health science centers.

DATES: A letter of intent to submit an application is requested by June 14, 2000. Applications for this announced grant must be received in the HRSA Grants Application Center by the close of business July 10, 2000, to be considered for competition. Applications shall be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications received after the deadline will be returned to the applicant.

ADDRESSES: Letters of intent to apply for funding should be mailed to Dr. Laura Cheever, HIV Education Branch, HRSA, 5600 Fishers Lane, Parklawn Building, Rm 7–16, Rockville, Maryland 20857. All applications should be mailed or delivered to: Grants Management Officer, HRSA Grants Application Center, 1815 N. Fort Meyer Drive, Suite 300, Arlington, VA 22209. Grant applications sent to any address other than that above are subject to being returned. **Federal Register** notices and application guidance for the HIV/AIDS Bureau program are available on the World Wide Web via the Internet. The web site for the HIV/AIDS Bureau is: http://www.hrsa.gov/hab/. Federal grant application kits are available at the following Internet address: http://forms.psc.gov/phsforms.htm. For those applicants who are unable to access application materials electronically, a hard copy of the official grant application kit (SF 5161) must be obtained from the HRSA Grants Application Center. The Center may be contacted by (telephone, 1–877–477–2123) FAX: (703–477–2345) e-mail: hrsagac@hrsa.gov.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Dr. Laura W. Cheever, Chief, HIV Education Branch, Division of Training and Technical Assistance, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–16, Rockville, Maryland 20857. Telephone number (301) 443–6364 and the FAX: (301) 443–9887.

Dated: May 17, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–12990 Filed 5–23–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

''Low-Income'' Levels for Health Professions and Nursing Programs

Health Resources and Services Administration (HRSA) is updating income levels used to identify a ''low-income family'' for the purpose of providing training in the various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low-income levels used for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from a disadvantaged background, or (3) individuals from low-income families.

The program under the Act that may use ''low-income levels'' as one of the factors in determining a disadvantaged or low-income status are:

Advanced Education Nursing (section 811)
Allied Health Special Projects (section 755)
Basic Nurse Education and Practice (section 831)
Dental Public Health (section 768)
Faculty Loan Repayment and Fellowships Program (section 738)
General and Pediatric Dentistry (section 747)
Health Administration Traineeships and Special Projects (section 769)
Health Careers Opportunity Program (section 739)
Loans to Disadvantaged Students (section 724)
Physician Assistant Training (section 747)
Primary Care Residency Training (section 747)
Public Health Traineeships (section 767)
Quentin N. Burdick Program for Rural Interdisciplinary Training (section 754)
Residency Training in Preventive Medicine (section 768)
Scholarships for Disadvantaged Students (section 737)
Public Health Training Centers (section 766)
Nursing Workforce Diversity (section 821)

These programs generally award grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, Pediatric medicine, nursing, chiropractic, public or nonprofit private

schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or educational entities to assist the disadvantaged to enter the graduate from health professions schools. Some programs provide for the repayment of health professions education loans for disadvantaged students.

The following income figures were taken from poverty thresholds published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for disadvantaged individuals or those from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1999.

Size of parents' family*	Income level**
1	$11,100
2	14,400
3	17,200
4	22,000
5	26,000
6 or more	29,200

*Includes only dependents listed on Federal income tax forms.

**Rounded to the nearest $100. Adjusted gross income for calendar year 1999.

Dated: May 18, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–12991 Filed 5–23–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment of Interagency Council on Biomedical Imaging in Oncology in Call for Requests to Present

The National Cancer Institute (NCI), Food and Drug Administration (FDA), and the Health Care Financing Administration (HCFA) are pleased to announce the formation of an Interagency Council on Biomedical Imaging in Oncology. This announcement summarizes the purpose of this newly created Interagency Council, how it will function, the types of advice it will provide, its composition and membership, and the time of the first Council meeting.

Name of Committee: The National Cancer Institute, Food and Drug Administration, and the Health Care, Financing Administration Interagency Council on Biomedical Imaging in Oncology.

Due Date for Request: June 8, 2000.

Contract Person: Ellen G. Feigal, Deputy Director, Division of Cancer Treatment and Diagnosis, National Cancer Institute, 31 Center Drive, Building 31, Room 3A44, Bethesda, MD 20892–2440, Tel; 301 496–6711, Fax: 301 496–0826, E-mail: *ef30d@nih.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Interagency Council?

The Interagency Council is a newly created multi-agency group designed to serve as a sounding board for investigators and manufacturers attempting to take emerging medical imaging technology to market. It consists of a core staff from the FDA, HCFA, and NCI with experience and knowledge concerning the decision-making processes for their agency for medical imaging products. Additional agency staff may be added to the core group on specific matters when needed. The purpose of the Council is to provide multi-agency advice that may help guide imaging technology developers in the fight against cancer. the Council will provide advice on projects or project proposals brought voluntarily by investigators and technology/device developers in industry and academia. It offers a new, multi-agency perspective to the communication with government agencies that is already available to investigators and companies.

Why Does the Nation Need This?

In September, 1999, the NCI and the National Electrical Manufacturer's Association co-sponsored the First NCI-Industry Forum and Workshop on Biomedical Imaging in Oncology. This meeting included senior leadership from industry, FDA, HCFA, NCI, and researchers from academia. We gathered to discuss ways to align investment in imaging technologies with the biomedical opportunities and unmet clinical needs in cancer. Participants asked the NCI to convene meetings between the multiple government agencies and industry to facilitate forward movement of promising technologies into the marketplace. The overall goal is to bring effective technologies into clinical use so that an impact on the public health can be achieved. The summary of the Forum and Workshop and follow-up comments to that conference can be reviewed on http://dino.nci.nih.gov/dctd/forum.

What Will the Interagency Council Do?

The three agencies participating in the Interagency Council all have different roles in the development of medical imaging technologies. NCI has created and is expanding a Biomedical Imaging Program. This effort currently funds innovative device and technology development, small animal imaging, in vivo cellular and molecular imaging centers, and a clinical trails imaging network (ACRIN). FDA is responsible for determining the safety and efficacy of specific products proposed for marketing and for marketing and for monitoring those products while they are on the market. HCFA is responsible, as a Federal health insurance provider, for determining coverage and reimbursement for products and services in the marketplace for their beneficiaries. By participating in the Council, these three agencies will be able to provide coordinated assistance to sponsors as they go through the development and regulatory processes necessary to bring products to market.

The specific roles envisioned by the participants in the Council are as follows:

NCI will provide input on scientific and medical issues, information on the initiatives and research resources available to fund or develop imaging technologies, explain the process for gaining access to such resources, and facilitate future interactions of imaging technology developers with NCI staff or with other NCI-sponsored investigators.

FDA will provide information on the issues that may need to be addressed to establish that a product is safe and effective, explain its existing guidance and procedures, and facilitate future interactions of imaging technology developers with its regulatory staff. How FDA may interact with sponsors is defined in statutes, regulations, and performance goals, and FDA expects that the Council will provide a mechanism to explain to imaging technology developers how to work within existing processes to bring products to market.

HCFA will provide information on its coverage and reimbursement processes, and facilitate future interactions of imaging technology developers with HCFA staff.

The products of the Interagency Council will be:

- Suggestions on the scientific and medical issues related to proposals, and information regarding available resources, potential relevant contacts for investigators within FDA, HCFA, NCI or with other investigators; and
- Written summary of the session, detailing the agenda topic, participants,

and proposed plans or advice given or discussed.

Will the Interagency Council Maintain Confidentiality?

Council meetings will be closed to the public. Information exchanged with the Interagency Council will be held in confidence by the participants, consistent with applicable laws. The NCI, FDA, and HCFA are all agencies in the Department of Health and Human Services, and by law are obligated to protect from disclosure trade secrets and confidential commercial information.

Who Can Present Before the Interagency Council?

Any company or academic investigator developing a device or technology relevant to biomedical imaging in cancer who seeks the perspectives of a multi-agency assessment and discussion may present.

What Is the Process?

The first due date for request is June 8, 2000. The Council will consider additional calls for requests after the initial Interagency Council meeting has taken place on July 20, 2000. The Council expects to meet about four times each year, if it receives enough requests to do so.

The Council may schedule discussion of several similar types of products at a single meeting. Generally, the Council will give preference in scheduling meetings to promising new technologies that are viewed as important new developments in cancer imaging.

Each meeting will be attended by the available core members on the Council. The core members also may invite additional relevant staff within their agency to attend the Council meetings. Logistics for the meeting date, time, and location will be coordinated by the Council coordinator, and communicated to all participants.

Request to Present

The requestor should follow a standardized format that the Council will make available on the Internet or that can also be completed and sent by hard copy. The information that the requestor will need to provide includes:

- Name of investigator, professional title(s) and degree(s) of investigator;
- Name of company and or/institution affiliation;
- What is the question/issue that you want to raise? Do you need/want representatives from the 3 government agencies, e.g., NCI, FDA, and HCFA, present for the presentation and discussion? Will you have data to present?

Submit to: Council Coordinator (same address as listed for contact information).

Reply to Letter of Intent

Within approximately 3 working days of receipt of the letter of request, the Council coordinator will send a letter acknowledging receipt of the request. Within 30 days, and after consultation with Council representatives, the Council coordinator will either invite the requester to a meeting (at the requestor's expense) if it appears that the question or issue would benefit from a multi-agency discussion, or indicate the Council's determination that a meeting will not be provided. A letter of invitation will ask the requestor to provide specific questions or issues they want to discuss with the Council, and, at the discretion of the requestor, relevant background information and data in a packet not to exceed 25 pages.

It if is not thought that a multi-agency discussion is required or desirable, then a letter will be sent to requestor stating the reason why such a meeting request has been denied. If appropriate, the letter may suggest other viable paths the requestor might pursue.

If the Council has already met with requestor before, the Council coordinator will determine if this is a new situation that requires a multi-agency discussion.

All letters will be kept on file with Council at the NCI.

Provision of Background Material

The requestor will submit background materials within two weeks of receipt of the letter from the Council. The Council coordinator will distribute the completed packet to the core members of the Interagency Council, and to the ad hoc members.

During the Session

Each session will last about a half-day, e.g., 3 to 4 hours, to discuss at most 2 or 3 issues. The general format of the session will consist of the requestor presenting their question/issue, and background information including data, when available. This will be a relatively informal discussion that can be interrupted as needed to answer questions, and clarify issues. At the conclusion of each topic, the Council will summarize the main issues and plans or set of actions that might be considered.

Follow-Up After the Session

Within one week after the meeting, the Council coordinator will prepare minutes of the meeting noting the main take-home points of the discussion and the conclusions. It will include the names of all participants in the session, the question or issue being addressed, and the proposed plans or advice given or discussed. The coordinator will obtain review and concurrence in the minutes by each agency participating in the meeting. The minutes will be sent to the person requesting the meeting and to agency representatives within four weeks of the meeting. The Council will keep one copy of the letter, as well as the letter of request and the submitted background information, on file at the NCI.

What the Interagency Council Is Not

The Interagency Council is intended to provide research groups with advice on the spectrum of scientific, regulatory, coverage and reimbursement issues that affect the development of imaging devices or technologies.

The Council's advice does not replace the legislatively mandated roles and functions of the agencies individually. In particular, the Interagency Council does not approve funding of research and development, and does not make or guarantee FDA regulatory, or HCFA coverage or reimbursement decisions.

Request to Present to the Interagency Council

(Suggested format)
Name of investigator: _____
Professional title(s) and degree(s) of investigator: _____
Name of company and/or institution affiliation: _____
Address: _____
_____
City: _____
State: _____
Zip: _____
What is the question/issue that you want to raise: _____
_____
Do you need/want representatives from the three government agencies, e.g., NCI, FDA, and HCFA, present for the presentation and discussion? Yes __ No __
Will you have data to present? Yes __ No __
Will you be presenting confidential commercial or proprietary information? Yes __ No __
Submit applications to: Jaime Quinn, M.P.H. Council Coordinator, National Cancer Institute, 31 Center Drive, Building 31, Room 3A44, Bethesda, MD 20892–2440. Tel: 301–496–6711, Fax: 301–496–0826, Email: *jq14u@nih.gov.*

Dated: May 16, 2000.

Alan Rabson,

Deputy Director, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–13026 Filed 5–23–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–04]

Notice of Proposed Information Collection for Public Comment for the Contract Administration, Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available document. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract Administration; Public and Indian Housing Programs.

OMB Control Number: 2577–0039.

Description of the need for the information and proposed use: Housing Agencies (HAs) must maintain certain records or submit certain documents to HUD with the award of oversight or construction contracts for development or new low-income housing developments or modernization of existing developments. The information is necessary for the proper performance of agency functions and compliance with the common rule for procurement (24 CFR 85.36(b)(2) and (9)). HAs must maintain a contract administration system and maintain sufficient records.

Agency form numbers, if applicable. HUD–5372; HUD–51000.

Members of affected public: State, local or Tribal Government Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,100 responses, five contract administration documents (bidding control record, register of change orders and time extensions, disputes and claims records, HUD–5372, Construction Progress Schedule, HUD–51000, Schedule of Amounts for Contract Payments) will be submitted annually for a total of 11,608 responses. The amount of burden hours per document varies and will have a total burden of 14,506 hours.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 18, 2000.

Elinor Bacon,

Deputy Assistant Secretary for Public Housing Investments.

BILLING CODE 4210–33–M

Construction Progress Schedule

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0039
(Exp. 4/30/2000)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Name of Public Housing Agency/Indian Housing Authority (PHA/IHA)			
2. City	3. State	5. Project Name	
4. Location		6. Project Number	
7. Contract For		8. Contract Time (Days)	
9. From (mm/dd/yyyy)	To (mm/dd/yyyy)	10. Contract Price $	
11. Number of Buildings	12. Number of Dwelling Units	13. Number of Rooms	

(Submit as many pages as necessary to cover the construction period.)								
	Year (yyyy)							
	Month							
Actual Monthly Value, Work in Place	($)							
Actual Accumulated Progress	(%)							
Anticipated Monthly Value	($)							
Accumulated Scheduled Progress	(%)							

Submitted by	Contractor's Name		
	Title	Signature	Date (mm/dd/yyyy)
Approved by	PHA/IHA		
	Title		Date (mm/dd/yyyy)
Approved by	Architect		Date (mm/dd/yyyy)

Instructions for Preparation of Construction Progress Schedule Form HUD-5372

General. The information required for items 1 through 6 can be obtained from the contract documents. (7.) Enter the type of work awarded by the PHA/IHA. This may be "general construction," "plumbing," "heating," "electrical," etc., depending upon prime contract awards. (8.) Enter the contract time in calendar days (unless otherwise stated). (9.) Enter the starting and completion dates as established by the Notice to Proceed.

Year and Month. At the top of the Schedule, space is provided for inserting the "Year" and "Month" to identify the times during which the work is to be performed.

Year. Enter the year when the Notice to Proceed was issued. If the starting date of the contract is such that the time assigned for completion will be carried into a succeeding year, two yearly designations will be shown, each centered over the applicable spread of time for each year.

Month. The body of the Schedule is divided into Columns, each representing a period of one month. Starting in the Column with the month stated in the Notice to Proceed, enter at the top of each column the successive months corresponding to the entire spread of the total contract time. The Schedule must contain monthly columns to cover the entire active period of contract, with extra columns for possible overruns in contract time.

Computation of Anticipated Monthly Value of Work in Place

Before presenting the form for approval, enter in each monthly column the dollar value (omit cents) of the increment of work anticipated to be put in place during that interval of time. This shall be the Contractor's best estimate of the rate of progress for each month. This section contains a suggested guide for the elapsed contract time vs. progress percentages.

The horizontal total of the monthly dollars shown for "Anticipated Monthly Value" must equal the contract price shown in the heading.

Accumulated Scheduled Progress – %

Entries on this line shall show in percentage of total completion the cumulative stage of progress that is scheduled to be reached at the end of each monthly interval. It is generally sufficient to state this anticipated progress to the nearest tenth of one percent, but for very large contracts it may be advisable to extend computations to the nearest hundredth.

The entry for the first month's column should be the % obtained by the anticipated monthly dollar value of work in place at the close of the first month being divided by the contract price.

The entry for the second month's column is obtained by the sum of the anticipated monthly dollar values of work in place for Columns 1 and 2 being divided by the contract price.

Enter in the third month's column the percentage computed similarly, using the sum of dollar values of work in place for Columns 1, 2, and 3. Continue in this manner for the succeeding monthly columns until "100" is reached in the final column.

Charting Actual Progress. The horizontal space extending through the monthly columns is divided into "Actual Monthly Value of Work in Place – $" and Actual Accumulated Progress – %." In each monthly column show the actual accumulated % of progress and the actual value of work in place for that month, as the work progresses. An anticipated complete shutdown at some stage in the work because of adverse seasonal weather or otherwise, as may occur in road work, excavation (grading), etc., is readily shown by a gap.

The Contractor's name shall be placed in the lower left-hand corner of the form, together with the signature and title of the employee who prepared the Schedule and the date. The form then shall be sent to the Architect for review. If the Architect considers that changes are necessary to make the Schedule more realistic, it will withhold approval and so advise the Contractor. When the form is acceptable and approved by the Architect, and the PHA/IHA, it will be returned to the Contractor, who shall reproduce and submit the number and style of prints required by the PHA/IHA.

Normal building construction experience has proved that the rate of overall progress (as measured by work in place) accelerates slowly at the start, reaches its peak in the middle third of the construction period, and tapers down at the close. The data following illustrate the general average expectancy of a well-balanced operation and may be used as a guide. If the proposed progress lies within reasonable range of these check points, the Schedule may be considered satisfactory insofar as the time-performance feature is involved.

% of Contract Time	% of Accumulated Progress
0	0
10	2
20	8
30	20
40	37
50	57
60	75
70	89
80	96
90	99
100	100

The foregoing percentages must be tempered by consideration of seasonal weather conditions and other known conditions which may affect the progress of the work. These percentages are offered for information only.

Schedule of Amounts for Contract Payments

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0039
(Exp. 4/30/2000)

No progress payments shall be made to the contractor unless a schedule of amounts for contract payments in accordance with the construction contract is received.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

Construction practices and HUD administrative requirements establish the need that HAs maintain certain records or submit certain documents in conjunction with the oversight of the award of construction contracts for the construction of new low-income housing developments or modernization of existing developments. These forms are used by HAs to provide information on the construction progress schedule and schedule of amounts for contract payments. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

Project Name and Location	Project Number

Name, Address, and Zip Code of Contractor

Nature of Contract		Contract Number
Approved for Contractor by	**Title**	**Date (mm/dd/yyyy)**
Approved for Architect by	**Title**	**Date (mm/dd/yyyy)**
Approved for Owner by	**Title**	**Date (mm/dd/yyyy)**

Item No. (1)	Description of Item (2)	Quantity (3)	Unit of Measure (4)	Unit Price in Place (5)	Amount of Sub-Item (6)	Amount of Principal Item (7)
Total Amount of Contract or Carried Forward						$

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of authorized represenative	Date signed (mm/dd/yyyy)

Instructions for Preparation of form HUD-51000

1. A separate breakdown is required for each project and prime contract instructions for preparation are given below.
   a. **Heading.** Enter all identifying information required for both forms.
   b. **Columns 1 and 2.** In column 1, enter the item numbers starting with No. 1, and in column 2 enter each principal division of work incorporated in the contract work.
      (1) **Master List.** The Master list contains the basic items into which any construction contract may be subdivided for the purpose of preparing the Construction Progress Schedule and the Periodical Estimates for Partial Payments. Only those items shall be selected which apply to the particular contract. To ensure uniformity, no change shall be made in the item numbers. Generally, about 25 to 40 major items appear in a contract.
      (2) **Items Subdivided.** In the Contractor's breakdown, against which all periodical estimates will be checked prior to payment, each major item must be subdivided into sub-items pertinent to the project involved and in agreement with the Contractor's intended basis for requesting monthly payments.
   c. **Column 3.** Enter the total quantity for each sub-item of each principal division of work listed in the breakdown.
   d. **Column 4.** Enter the appropriate unit of measure for each sub-item of work opposite the quantities described in column 3, such as "sq. ft.," "cu. yd.," "tons," "lb.," "lumber per M/BM," "brickwork per M," etc., applicable to the particular sub-item. Items shown on "lump sum" or equivalent basis will be paid for only on completion of the whole item and not on a percentage of completion basis.
   e. **Column 5.** Enter the unit price, in place, of each sub-item of work.
   f. **Column 6.** Enter the amount of each sub-item obtained by multiplying the quantities in column 3 by the corresponding unit prices in column 5.
   g. **Column 7.** Enter the amount of principal item only, obtained by adding the amounts of all sub-items of each principal division of work listed in column 6. Continue with the breakdown on form HUD-51000.
   h. The "Schedule of Amounts for Contract Payments" shall be signed and dated in the space provided at the bottom of each sheet of the form by the individual who prepared the breakdown for the Contractor.

2. The minimum number of copies required for each submission for approval is an original and two copies. When approved, one fully approved copy will be returned to the Contractor.

Master List of Items

Item No.	Division of Work	Item No.	Division of Work	Item No.	Division of Work
1	Bond	20	Rough Carpentry		**Site Improvements**
2	General Conditions \1	21	Metal Bucks	44	Retaining Walls
3	Demolition & Clearing	22	Caulking	45	Storm Sewers
		23	Weatherstripping	46	Sanitary Sewers
	Structures	24	Lath & Plastering-Drywall	47	Water Distribution System
4	General Excavation	25	Stucco	48	Gas Distribution System
5	Footing Excavation	26	Finish Carpentry	49	Electrical Distribution System
6	Backfill	27	Finish Hardware	50	Street & Yard Lighting
7	Foundation Piles & Caissons	28	Glass & Glazing	51	Fire & Police Alarm System
8	Concrete Foundations	29	Metal Doors	52	Fire Protection System
9	Concrete Superstructures	30	Metal Base & Trim	53	Street Work
10	Reinforcing Steel	31	Toilet Partitions	54	Yard Work
11	Waterproofing & Dampproofing	32	Floors	55	(Other)
12	Spandrel Waterproofing	33	Painting & Decorating	56	(Other)
13	Structural Steel	34	Screens		
14	Masonry	35	Plumbing		**Equipment**
15	Stonework	36	Heating	57	Shades & Drapery Rods
16	Miscellaneous & Ornamental Metal	37	Ventilating System	58	Ranges
17	Metal Windows	38	Electrical	59	Refrigerators
18	Roofing	39	Elevators	60	Kitchen Cabinets & Work Tables
19	Sheet Metal	40	Elevator Enclosures—Metal	61	Laundry Equipment
		41	Incinerators—Masonry & Parts	62	(Other)
		42	(Other)		
		43	(Other)	63	**Punch List \2**
				64	Lawns & Planting

1 General Conditions should be 3% to 5% of contract amount.
2 Punch List should be approximately 1/2 of 1% or $30 per dwelling unit, whichever is greater.

Previous editions are obsolete

form **HUD-51000** (7/97)
ref Handbooks 7417.1 and 7485.1

[FR Doc. 00–13040 Filed 5–23–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the USGS clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: National Atlas of the United States of America.

Current OMB approval number: 1028–0057.

Abstract: Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used; (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in a return postage-paid format and via the World Wide Web. Focus groups will be held at various locations across the United States and could include prototype product testing. Software usability studies will be conducted at various locations and will result in the development of products that are easier to use. Customer information gathered from the questionnaires, focus groups, and usability studies will be used to evaluate the National Atlas of the United States products and to make development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

Bureau form number: None.

Frequency: An estimated 2–3 surveys, 2–5 focus groups, and 2–5 software usability studies per year to evaluate potential customer segments and reactions.

Description of respondents: Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

Estimated completion time: Varies depending on the mechanism used: approximately 0.15 minutes per survey and 1 hour per focus group session.

Annual responses: Approximately 1,000 survey, 75 focus group responses, and 75 software usability responses.

Annual burden hours: 500.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: May 12, 2000.

Richard E. Witmer,

Chief Geographer.

[FR Doc. 00–13000 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Cow Creek Band of Umpqua Tribe of Indians in Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 200.05 acres as an addition to the reservation of the Cow Creek Band of Umpqua Tribe of Indians on May 3, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Cow Creek Band of Umpqua Tribe of Indians for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Cow Creek Band of Umpqua Tribe of Indians

The following described real property is located in the North Half of Section 29 and in the South Half of Section 20, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon.

Beginning at a brass cap located at the Southwest corner of the William Preston Donation Land Claim Number 44, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along the West boundary of said Donation Land Claim Number 44, North 0°48′23″ East 2231.02 feet to a 5/8 inch iron rod located at the intersection of said Donation Land Claim and the section line common to Sections 20 and 29, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along said section line, North 89°58′05″ West 1932.48 feet to a brass cap located at the Section Corner common to Sections 19, 20, 29, and 30, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along the section line common to Sections 19 and 20, North 1°00′05″ East 677.74 feet to a 5/8 inch iron rod located on the southerly right of way boundary of County Road Number 20A; Thence along said southerly right of way boundary, North 72°57′10″ East 402.28 feet to a 5/8 iron rod; Thence continuing along said southerly right of way boundary, North 17°02′50″ West 95.00 feet to a 5/8 inch iron rod; Thence leaving said southerly right of way boundary and crossing said County Road Number 20A, North 17°02′50″ West 60.00 feet to a 5/8 inch iron rod located on the northerly right of way boundary of said County Road Number 20A; Thence along said northerly right of way boundary, North 17°02′50″ West 50.00 feet to a point; Thence continuing along said northerly right of way boundary, South 72°57′10″ West 70.84 feet to a point located on the said

northerly right of way boundary and its intersection with the southeasterly bank of the South Umpqua River; Thence leaving said northerly right of way boundary and running along the said southeasterly bank of the South Umpqua River, North 33°50′49″ East 81.20 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 40°35′52″ East 153.31 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 45°23′03″ East 24.87 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 55°48′50″ East 78.16 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River North 42°45′25″ East 35.86 feet to a point; Thence continuing along said southeasterly bank of the South Umpqua River, North 36°24′42″ East 75.45 feet to a point located on the South boundary of Government Lot 2, Section 20, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence leaving said southeasterly bank of the South Umpqua River and running along the South boundary of said Government Lot 2, South 89°29′39″ East 44.57 feet to a point located at the Southeast corner of said Government Lot 2 on the westerly boundary of the John Yokum Donation Land Claim Number 43; Thence along the easterly boundary of said Government Lot 2, North 1°06′14″ East 51.10 feet to a point located at the Northeast corner of said Government Lot 2, said point is along the interior ''L'' Corner of the said John Yokum Donation Land Claim Number 43; Thence North 2°02′42″ East 919.73 feet to a 5/8 inch iron rod located in the southerly right of way boundary of U.S. Interstate Highway Number 5; Thence along said southerly right of way boundary of U.S. Interstate Highway Number 5, North 78°37′03″ East 212.05 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way of said U.S. Interstate Highway Number 5, North 89°54′19″ East 499.91 feet to a 5/8 inch iron rod located on the northwesterly right of way boundary of said County Road Number 20A; Thence leaving said southerly right of way boundary of said U.S. Interstate Highway Number 5 and running along the said northwesterly right of way boundary of said County Road Number 20A, South 12°57′22″ West 225.06 feet to a 5/8 inch iron rod; Thence leaving said northwesterly right of way of said County Road Number 20A and crossing the right of way of said County Road Number 20A, South 67°42′14″ East 60.29 feet to a 5/8 inch iron rod located on the southeasterly right of way boundary of said County Road Number 20A; Thence along said southeasterly right of way boundary of said County Road Number 20A, North 39°46′17″ East 16.34 feet to a 5/8 inch iron rod located on the said southerly right of way of said U.S. Interstate Highway Number 5; Thence leaving said right of way boundary of said County Road Number 20A and running along the said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 89°54′39″ East 184.60 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 84°00′20″ East 200.89 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 71°52′32″ East 210.36 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 55°08′48″ East 139.93 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary of said U.S. Interstate Highway Number 5, North 40°06′59″ East 2.77 feet to a 5/8 inch iron rod; Thence leaving said southerly right of way of said U.S. Interstate Highway Number 5 and running South 0°24′54″ West 45.71 feet to a 5/8 inch iron rod; Thence South 89°35′07″ East 160.00 feet to a 5/8 inch iron rod; Thence South 0°24′54″ West 836.51 feet to a point from which a 1/2 inch iron rod bears South 0° 24′54″ West 1.44 feet; Thence South 89°23′37″ East 534.73 feet to a 1/2 inch iron rod; Thence South 0°54′31″ West 256.92 feet to a 5/8 inch iron rod; Thence Due East 693.05 feet to a 5/8 inch iron rod; Thence South 2°11′00″ West 577.95 feet to a 5/8 inch iron rod; Thence South 0°08′20″ West 585.20 feet to a 5/8 inch iron rod located on the section line common to said Sections 20 and 29, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along said section line common to said Sections 20 and 29, North 86°41′24″ West 63.09 feet to a 5/8 inch iron rod; Thence leaving said section line common to said Sections 20 and 29, South 0°08′20″ West 2181.12 feet to a 5/8 inch iron rod located on the South boundary of said William Preston Donation Land Claim Number 44; Thence along the southerly boundary of said William Preston Donation Land Claim Number 44, Due West 1452.48 feet to the point of beginning.

Less that portion of Douglas County Road Number 20A that crosses through the Northwest corner of the above described property. Said portion of said Douglas County Road Number 20A is more particularly described as follows:

Beginning at a 5/8 inch iron rod located on the southerly right of way boundary of Douglas County Road Number 20A, said 5/8 inch iron rod bears North 1°00′05″ East 677.74 feet, North 72°57′10″ East 402.98 feet, and North 17°02′50″ West 95.00 feet from the Section Corner common to Sections 19, 20, 29, and 30, Township 30 South, Range 5 West, Willamette Meridian, Douglas County, Oregon; Thence along the said southerly right of way boundary of said Douglas County Road Number 20A, North 72°57′10″ East 317.78 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary, along the arc of a 316.49 foot radius curve to the left, the long chord of which bears North 50°25′25″ East 242.53 feet to a 5/8 inch iron rod; Thence continuing along said southerly right of way boundary, North 27°53′40″ East 1062.80 feet to a 5/8 inch iron rod; Thence leaving said southerly right of way boundary and crossing the right of way of said Douglas County Road Number 20A, North 67°42′14″ West 60.29 feet to a 5/8 inch iron rod located on the northerly right of way boundary of said Douglas County Road Number 20A; Thence along said northerly right of way boundary of said Douglas County Road Number 20A, South 27°53′40″ West 1056.92 feet to a 5/8 inch iron rod; thence continuing along said northerly right of way boundary, along the arc of a 256.49 foot radius curve to the right, the long chord of which bears South 50°25′25″ West 196.55 feet to a 5/8 inch iron rod; Thence continuing along said northerly right of way boundary, South 72°57′10″ West 317.78 feet to a 5/8 inch iron rod; Thence leaving said northerly right of way boundary of said Douglas County Road Number 20A and crossing the right of way of said Douglas County Road Number 20 A, South 17°02′50″ East 60.00 feet to the Point of Beginning.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: May 3, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–13081 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 310 1310 03–2410; OMB Approval Number 1004–0074]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 7, 2000, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (65 FR 12027) requesting comments on the collection. The comment period ended May 8, 2000. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas and Geothermal Resources Leasing (43 CFR 3120, 3209 and 3220).

OMB Approval Number: 1004–0074.

Abstract: Respondents supply information that will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources parcel on Federal land and to enable the BLM to complete reviews in compliance with the National Environmental Policy Act. The BLM needs the information to determine the eligibility of an applicant to hold, explore for, develop, and produce oil and gas and geothermal resources on Federal lands.

Forms Numbers: 3000–2 and 3200–9.

Frequency: On occasion.

Description of Respondents: Individuals, small business, large corporations.

Estimated Completion Time: 2 hours each form.

Annual Responses: 443.

Annual Burden Hours: 886.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: May 9, 2000.

Carole J. Smith,

Bureau Clearance Officer.

[FR Doc. 00–13072 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–921–5440–K029–EU; WYW 150541)

Realty Action; Conveyance of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; airport conveyance to the Joint Powers Big Piney-Marbleton Airport Board.

SUMMARY: The following public lands in Sublette County have been found suitable for conveyance to the Joint Powers Big Piney-Marbleton Airport Board for airport purposes under the Act of May 24, 1928, as amended, and Section 516 of the Airport and Airway Improvement Act of 1982.

Sixth Principal Meridian, Sublette County, Wyoming

T. 30 N., R. 111 W.,
Sec. 7, lots 3, 4, NE¼SW¼;
Sec. 8, SE¼SW¼, SW¼SE¼;
Sec. 17, NW¼NE¼, N½NW¼,
N½SW¼NW¼;
Sec. 18, lot 1, NE¼NE¼;
Sec. 20, S½NW¼.

The area described contains 499.5 acres.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

SUPPLEMENTARY INFORMATION: Conveyance of the lands is consistent with applicable Federal and county land use plans and will help meet the needs of Sublette County residents. Under this conveyance, improvements will be made at the Big Piney-Marbleton Municipal Airport for safety purposes.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally the conveyance will be subject to rights of record including a right-of-way, WYW 7389 to Sublette County for road purposes; a right-of-way, WYW 146644 to the Federal Highway Administration; three rights-of-way, WYW 36810, WYW 87760, and WYW 6316, issued to Pacificorp for power transmission purposes; and two rights-of-way, WYW 76039, and 090925, issued to Century Telephone for communication purposes.

Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the office listed below.

The conveyance is consistent with the Pinedale Resource Management Plan. The land is not required for any other Federal purpose.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except applications for airport purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, Branch of Minerals & Lands Authorizations, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objection, this proposed realty action will become final.

Dated: May 18, 2000.

Tamara J. Gertsch,

Realty Specialist.

[FR Doc. 00–13030 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0064).

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) to request an extension of OMB's approval for a currently approved information collection. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before June 23, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0064), 725 17th Street, NW, Washington, DC 20503. Copies of these comments should also be sent to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

Public Comment Procedure

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Payor Information Form—Solid Minerals, Form MMS–4030, OMB Control Number 1010–0064, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: Payor Information Form—Solid Minerals.

Bureau Form Number: Form MMS–4030.

OMB Control Number: 1010–0064.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

MMS' Royalty Management Program is proposing to continue the use of Form MMS–4030 to be used by royalty payors on Federal or Indian mineral leases. The information on Form MMS–4030 is used to establish a database of new payors/leases, lease-level (rent, advance and minimum royalty) obligations, other royalty/lease data, and to change existing royalty/lease data.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. A 60-day **Federal Register** notice soliciting comments on this collection of information was published on December 8, 1999 (64 FR 68700). No comments were received.

Respondents/Affected Entities: Royalty payors.

Frequency of Response: On occasion, annually.

Estimated Number of Respondents: 130 payors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 173 burden hours. Refer to the following chart:

Citations	Reporting and recordkeeping requirements	Frequency	Number	Burden	Total annual burden hours
30 CFR 210.201	Complete and submit Form MMS–4030	Annual	130	1 hour	130 hours
30 CFR 212.50	Maintain records for 6 years	Annual	130	.333 hours	43 hours
Total			130		173

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 23, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744 .

Dated: April 24, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–13020 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Environmental Assessment for Proposed Construction and Operation of Telecommunications Facilities in John D. Rockefeller, Jr. Memorial Parkway, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the National Park Service announces the availability of an environmental assessment for proposed the construction and operation of a wireless communication facility on Steamboat Mountain in John D. Rockefeller, Jr. Memorial Parkway, WY. Steamboat Mountain is located at N. latitude 44–3–5, W. longitude 110–41–50. Union Telephone Company made an initial application to install the site in April, 1999. Public notice of the application was published in the **Federal Register**/ Vol. 64. No. 86/Wednesday, May 5, 1999/Notices. JBR Environmental Consultants, Inc. prepared the assessment for the two companies for submittal to the National Park Service. The environmental assessment describes a no action alternative and two action alternatives. Union Telephone and CommNet Cellular, Inc.'s proposed action includes the installation of an underground power line to the site, two 8x18x9 wooden buildings, and a 70′ wooden tower, including various wireless communication devices, at the site. Under the proposal, the companies would bring all materials to the site via a 3,300 cleared route needed for the powerline. At this time, the National Park Service's preferred alternative would bring some of the materials to the site by helicopter. The assessment discloses the possible environmental impacts of all the alternatives. Persons wishing to receive a copy of the assessment may do so by contacting the Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, WY 83012, or by calling (307) 730–3410.

DATES: Written comments on the environmental assessment must be postmarked or hand delivered by close of business June 30, 2000. Please address comments to the Superintendent at the above address. Comments will become part of the official record. Names and addresses of those who make comments will become part of the public record and cannot be withheld unless anonymity is specifically requested of and approved by the National Park Service.

FOR FURTHER INFORMATION: Contact the Superintendent, Grand Teton National Park, at the above address.

Dated: May 12, 2000.

Jack Neckels,

Superintendent, Grand Teton National Park.

[FR Doc. 00–13031 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Funding Assistance for Non-Federal Acquisition of Civil War Battlefield Land

AGENCY: National Park Service, Interior.

ACTION: Availability of Funding for Acquisition of Civil War Battlefield Land.

SUMMARY: The National Park Service (NPS) announces the availability of funds to assist States and local communities in acquiring for permanent protection lands, or interests in lands, at significant Civil War battlefield sites.

ADDRESSES: Funding proposals should be mailed to: Hampton Tucker, National Park Service, Heritage Preservation Services 1849 C Street, NW, NC 200, Washington, DC 20240, telephone (202) 343–3580.

FOR FURTHER INFORMATION CONTACT: Hampton Tucker, National Park Service, Heritage Preservation Services, 1849 C Street NW, NC 200, Washington, DC 20240; telephone (202) 343–3580.

SUPPLEMENTARY INFORMATION: Under the 1999 Interior Appropriations Act (Public Law 105–83), Congress appropriated $8 million from the Land & Water Conservation Fund to assist non-Federal efforts to acquire and preserve Civil War battlefield lands. The Congress assigned most of these funds to specific projects. At this time, it appears that a portion of these funds will be left unspent and will be reassigned to other worthy projects. NPS seeks proposals from State and local governments—or from qualified non-profit historic preservation organizations acting through an agency of State or local government—for the non-federal acquisition of significant Civil War battlefield land.

Project proposals are subject to the following requirements:

1. The 1999 Appropriations Act requires that these funds be matched on a two-for-one basis with non-federal dollars. That is, the federal dollars can pay for no more that one-third of the acquisition cost.

2. The purchase price must be supported by a qualified appraisal that has been approved by NPS as meeting the Uniform Appraisal Standards for Federal Land Acquisitions.

3. The battlefield land acquired with the assistance of these funds must be permanently protected from inappropriate development either through public ownership or through conveyance of a perpetual easement to a public historic preservation agency.

NPS will give priority to acquisition of land, or interests in land, within the ''core'' areas of Priority I and Priority II battlefields, as identified by the Congressionally-chartered Civil War Sites Advisory Commission (see list below). Among potential projects NPS will give highest priority to acquisition projects that can be completed within the immediate future.

Proposals should be submitted by July 14, 2000, and must include:

1. A carefully drawn map (preferably on a U.S.G.S. Quadrangle Map) that sets out the boundaries of the battlefield and identifies within those boundaries the specific lands to be acquired.

2. The number of acres of land to be acquired.

3. A description of the battle-related events that occurred on the land.

4. A statement of whether the owner of the land to be acquired has indicated a willingness to sell the land.

5. A statement of the owner's asking price and/or the estimated fair market value of the land to be acquired.

6. A statement of how much federal assistance from this program the applicant is requesting.

7. A statement of how much matching share is already on hand or firmly pledged.

Priority I Civil War Battlefields

Alabama Mobile Bay (Ft Morgan & Blakeley); *Arkansas* Prairie Grove; *Georgia* Allatoona, Chickamauga Kennesaw Mountain, Ringgold Gap; *Kentucky* Mill Springs, Perryville; *Louisiana* Port Hudson; *Maryland* Antietam, Monocacy, South Mountain; *Mississippi* Brices Cross Roads,

Chickasaw Bayou, Corinth, Port Gibson, Raymond, Vicksburg; *Missouri* Byram's Ford, Fort Davidson, Newtonia; *New Mexico* Glorieta, Pass; *North Carolina* Bentonville, Fort Fisher; *Oklahoma* Honey Springs; *Pennsylvania* Gettysburg; *South Carolina* Secessionville, *Tennessee* Chattanooga, Fort Donelson, Spring Hill; *Virginia* Boydton Plank Road, Brandy Station, Bristoe Station, Cedar Creek, Chaffin's Farm/New Market Heights, Chancellorsville, Cold Harbor, Deep Bottom II, Fisher's Hill, Gaines' Mill, Glendale, Kernstown I, Malvern Hill, Manassas, Second Mine Run, North Anna, Petersburg, Richmond, Spotsylvania Court House, White Oak Road, Wilderness; *West Virginia* Harpers Ferry, Rich Mountain.

Priority II Civil War Battlefields

Arkansas Chalk Bluff, Devil's Backbone, Elkin's Ferry, Marks' Mills, Prairie D'an; *Colorado* Sand Creek; *Georgia* Dalton I, Davis' Cross Road, Griswoldville, Kolb's Farm, Lovejoy's Station, New Hope Church, Resaca, Rocky Face Ridge; *Kentucky* Cynthiana, Munfordville, Richmond; *Louisiana* Fort De Russy, Irish Bend, LaFourche Crossing, Mansfield, Mansura; *Maryland* Boonsborough; *Mississippi,* Big Black River Bridge, Champion Hill, Grand Gulf, Okolona, Snyder's Bluff; *Missouri* Carthage, Fredericktown, Lexington, Lone Jack, Newtonia; *New Mexico* Valverde; *North Carolina* Monroe's Cross Roads, Roanoke Island, Wyse Fork; *Oklahoma* Chustenahlah; *South Carolina* Grimball's Landing, Honey Hill; *Tennessee* Brentwood, Fair Garden, Murfreesborough, Parker's Cross Roads, Thompson's Station; *Texas* Sabine Pass II; *Virginia* Aquia Creek, Berryville, Buckland Mills, Cedar Mountain, Cool Springs, Cross Keys, Cumberland Church, Dinwiddie Courthouse, 1st Deep Bottom, Hampton Roads, Hatcher's Run, Haw's Shop, Lewis' Farm, Peebles' Farm, Piedmont, Port Republic, Port Walthall Junction, Ream's Station, Rice's Station, Sailor's Creek, Saltville, Suffolk (Hill's Point), Sutherland's Station, Swift Creek, Tom's Brook, Trevilian Station, Ware Bottom Church, White Oak Swamp; *West Virginia* Hoke's Run, Smithfield Crossing, Summit Point.

Dated: May 19, 2000.

Paul Hawke,

Chief, American Battlefield Protection Program.

[FR Doc. 00–13090 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park; Bar Harbor, Maine; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 5, 2000.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held February 7, 2000
2. Committee reports
   Land Conservation—Proposed conservation easements:
   A. Gray property, Fernald Point, Southwest Harbor, ME
   B. Herter property, West Point, Pretty Marsh, Mt. Desert, ME
   Park Use
   Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, September 11, 2000.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609; tel: (207) 288–3338.

Dated: May 12, 2000.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 00–12997 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places;Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 13, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 8, 2000.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Bradley County

New Zion AME Zion Church, Jct. of Myrtle and Neely Sts., Warren, 00000628

Greene County

Big Slough Ditch Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 855, Brighton, 00000629

Hot Spring County

Burks Service Station, (Arkansas Highway History and Architecture MPS) Jct. of Page Ave. and Sullenberger, Malvern, 00000630

Lawrence County

US 63 Black River Bridge, (Historic Bridges of Arkansas MPS) US 63, Black Rock, 00000631

Marion County

US 62 Bridge over Crooked Creek, (Historic Bridges of Arkansas MPS) US 62, Pyatt, 00000632

Ouachita County

Laney, Ben, Bridge, (Historic Bridges of Arkansas MPS) US 79B over Ouachita River, Camden, 00000633

Oakland Cemetery, 100 Blk. of Maul Rd. bounded by Pearl St. and Madison Ave., Camden, 00000634

Pike County

Self Creek Bridge, (Historic Bridges of Arkansas MPS) US 70 across Self Cr. and Lake Greeson, Daisy, 00000635

Polk County

Studebaker Showroom, (Arkansas Highway History and Architecture MPS) 519 Port Arthur, Mena, 00000636

Washington County

Washington County Road 35 Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 35, Woolsey, 00000637

FLORIDA

Marion County

Armstrong House, 18050 US 301 N., Citra, 00000638

GEORGIA

De Kalb County

Cheek—Spruill House, 5455 Chamblee—Dunwoody Rd., Dunwoody, 00000639

ILLINOIS

Lake County

Camp Logan National Guard Rifle Range Historic District, Illinois Beach State Park, Zion, 00000640

MASSACHUSETTS

Norfolk County

Colburn School—High Street Historic District, 369–649, 390–680 High St., Westwood, 00000641

MICHIGAN

Huron County

Olgilvie Building, (Port Hope MPS) 4443 Main St., Port Hope, 00000642

Jackson County

Kennedy, Frederick A., Jr., and Caroline Hewett, Farm, 8490 Hanover Rd. (Hanover Township), Hanover, 00000643

Manistee County

Camp Tosebo, 7228 Miller Rd. (Onekama Township), Red Park, 00000644

Oakland County

Holly Union Depot, 223S. Broad St., Holly, 00000645
Western Knitting Mills, 400 Water St., Rochester, 00000646

Wayne County

Bradford, Benjamin and Mary Ann, House, (Canton Township MPS) 48145 Warren Rd., Canton, 00000648
Kinyon, Orrin, and Roxanne Fairman, House, (Canton Township MPS) 7675 N. Ridge Rd., Canton, 00000649
Patterson, John, and Eliza Barr, House, (Canton Township MPS) 6205 N. Ridge Rd., Canton, 00000647

NEW HAMPSHIRE

Cheshire County

Lawrence Farm, 9 Lawrence Rd., Troy, 00000650

Hillsborough County

Hamblet—Putnam—Frye House, 293 Burton Hwy., Wilton, 00000651

Merrimack County

Downtown Concord Historic District, Roughly bounded by Center St., Loudon Rd., Storrs St., Hills Ave., S. State, Green, School, Capitol, and Park Sts., Concord, 00000652

NEW JERSEY

Morris County

Illumination Gas Plant of the New Jersey State Asylum for the Insane at Morris Plains, Old Dover Rd., Parsippany, 00000653

OKLAHOMA

Beckham County

Sayre Rock Island Depot, 106 E. Poplar, Sayre, 00000654

Oklahoma County

St. Stephen's Episcopal Church, 812 Blaine Ave., Chandler, 00000655

TEXAS

Anderson County

Freeman Farm, Co. Rd. 323, 3 miles SE. of Frankston, Frankston, 00000656

A Request for Removal has been made for the following resources:

MINNESOTA

Dodge County

Holtermann, Andrew, House (Dodge County MRA), SR 30, S side, Vernon Township, 82002940

PENNSYLVANIA

Berks County

Astor Theatre, 730–742 Penn St., Reading, 78002342

[FR Doc. 00–12996 Filed 5–23–00; 8:45 am]

BILLING CODE 4310–70–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Thursday, June 8, 2000.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Hearing OPEN to the Public at 2:00 p.m.

PURPOSE: In conjunction with the quarterly meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedure

Individuals wishing to make statements or present written statements must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., June 7, 2000. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., June 7, 2000. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at cdown@opic.gov.

Dated: May 22, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–13152 Filed 5–22–00; 1:17 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the United States International Trade Commission (USITC or Commission), has submitted a request for approval of electronic form collection to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The form is for use by the Commission in connection with the USITC Electronic Document Imaging System On-Line (EDIS On-Line, or EOL) Web Public Pilot Project. The USITC EOL provides on-line, rapid and customized retrieval of docketed information and images of public documents filed with the USITC in conjunction with investigations conducted under the various international trade statutes and has been an Internet tool primarily for government users.

Representatives of the international trade bar and researchers have requested that EOL be made formally available to the public. The purpose of the public pilot project is to assess the additional costs of making this service formally

available to the general public, identify more fully our customer base, and to evaluate benefits. The user registration form is required to accurately track usage and costs by user sector and geographic location. The form would appear on the USITC EOL Internet site (*http://dockets.usitc.gov*) and would need to be filled out only once. The commission expects to complete the pilot project by March 31, 2003.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form:* USITC Electronic Docket Imaging System Pilot Project: ''Create New User Account Form''.

(3) *Type of request:* New.

(4) *Frequency of use:* Single data gathering.

(5) *Description of respondents:* Government and private sector users of the USITC EOL Web Pilot Project.

(6) *Estimated number of respondents:* 600.

(7) *Estimated total number of minutes to complete the forms:* 2.0 minutes.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents may be obtained from Marilyn Abbott (E-mail *mabbott@usitc.gov* or telephone 202–205–3431). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All Comments should be specific, indicate which part of the questionnaire is objectionable, describe the concern in detail, and include specific suggested revisions or language changes. Copies of any comments should be provided to Donna R. Koehnke, Secretary, Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: May 16, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13074 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–416]

The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on April 12, 2000 from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–416, The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation, a report to the President under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

EFFECTIVE DATE: May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Walker Pollard (202–205–3228) or Constance Hamilton (202–205–3263), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

USTR requested that the Commission's report include the following:

- An analysis of the likely impact of the EU-South Africa agreement (EU-SA agreement) on U.S. trade and investment with South Africa.
- An analysis of the potential trade diversionary effects of the EU-SA agreement and other relevant factors affecting U.S. trade with South Africa.
- The percentage of trade in goods covered by the EU-SA agreement and a profile of South Africa's trade and investment patterns.
- A summary of the EU-SA agreement's trade-related provisions including a descriptive summary of the staging provisions of the agreement and a list of all product categories on which tariffs will not drop to zero by the end of the 12-year implementation period.
- A summary of relevant U.S. business views of the EU-SA agreement.

As requested by the USTR, because the agreement will be implemented in stages, the Commission's economic analysis will look at the impact of the provisions that would be in effect in the first year of the agreement, mid-implementation and full implementation. In addition, because the agreement has implications for the Southern African Customs Union (SACU) and the Southern African Development Community (SADC), the Commission's analysis will, as requested, include information on the effects on U.S. trade with the other SACU and SADC members and a discussion of the impact of the agreement on the members of the SACU and SADC in general. The report will contain a review and bibliography of existing academic and other literature relating to this topic.

In addition to descriptive materials related to the agreement and its broad range of potential effects, the Commission will, as requested, conduct a formal quantitative economic analysis based on actual trade and related to economic variables from a recent representative, historical period. This analysis will report on export and import levels and at a sectoral level, to the extent possible, on changes in U.S. trade and investment with South Africa.

The report will include a description of any models or data sets used in the quantitative assessments of the issues. These descriptions will include a discussion of the structure and function of the model and the type and breadth of data. The study will discuss the nature of the limitations and biases in any formal modeling conducted and how such factors may affect reported results, based on economic theory, reviews of any relevant economic literature, and more general descriptive analysis.

The Commission plans to submit its report, The Economic Effects on the United States of the EU-South Africa Agreement on Trade, Development, and Cooperation, by April 12, 2001. The USTR indicated that the report will be classified as confidential.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on September 7, 2000. All persons shall have the right to appear, by counsel or in person, to present information and to be heard.

Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., August 17, 2000.

Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., August 31, 2000; the deadline for filing post-hearing briefs or statements is 5:15 p.m., September 21, 2000. In the event that, as of the close of business on August 17, 2000, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after August 17, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation.

Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 21, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

European Union, EU, South Africa, free trade area, FTA, imports, exports, foreign direct investment.

Issued: May 18, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13078 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Final)]

In the Matter of Bulk Aspirin From China; Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of domestic producer Rhodia, Inc.(''Petitioner''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for May 18, 2000, *in camera.* See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR §§ 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public.

The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Tina Potuto Kimble, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3116, e-mail tkimble@usitc.gov.

Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Petitioner has justified the need for a closed session. Petitioner seeks a closed session to allow for a discussion of its financial and operating condition and specific customer accounts. In this investigation, the aggregate data of the domestic industry are business proprietary information (BPI). Because discussion by Petitioner of its own operations and of the domestic industry's data will necessitate disclosure of BPI, it can only occur if a portion of the hearing is held *in camera.* In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by Petitioner with questions from the Commission. In addition, the hearing will include a 10-minute *in camera* session for a confidential presentation by the Petitioner (Rhodia) and for questions from the Commission relating to the business proprietary information (''BPI''). For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the petitioners' presentation in the *in camera* session will be taken from their respective overall allotment for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in Bulk Aspirin from China, Inv. No. 731–TA–828 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: May 17, 2000

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13077 Filed 5–23–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–825–826 (Final)]

Certain Polyester Staple Fiber From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Korea and Taiwan of certain subject polyester staple fiber, other than low-melt fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

the United States, that has been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2]

The Commission further determines, pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Korea and Taiwan of low-melt polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at LTFV.[3]

Background

The Commission instituted these investigations effective April 2, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by E.I. DuPont de Nemours, Wilmington, DE; Arteva Specialities S.a.r.l. d/b/a KoSa, Spartanburg, SC; Nan Ya Plastics Corp., America, Lake City, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC on April 2, 1999.[4] The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain polyester staple fiber from Korea and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 24, 1999 (64 FR 66198). The hearing was held in Washington, DC on March 28, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[2] Chairman Bragg found one domestic like product and therefore made an affirmative determination with respect to all certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.

[3] Chairman Bragg found one domestic like product and therefore made an affirmative determination with respect to all certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.

[4] Nan Ya Plastics Corp. is no longer a petitioner in these investigations. DuPont is not a petitioner in the investigation on Taiwan.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 2000. The views of the Commission are contained in USITC Publication 3300 (May 2000), entitled Certain Polyester Staple Fiber from Korea and Taiwan: Investigations Nos. 731–TA–825–826 (Final).

Issued: May 17, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13076 Filed 5–23–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–415]

U.S. Trade and Investment With Sub-Saharan Africa; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to submit comments.

EFFECTIVE DATE: May 15, 2000.

SUMMARY: Following receipt on March 12, 2000, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–415, U.S. Trade and Investment with Sub-Saharan Africa.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Hamilton, Office of Economics (202–205–3263), or Mr. William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects of the investigation. The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

Background

Pursuant to authority under section 332(g) of the Tariff Act of 1930, the USTR requested that the Commission prepare a series of annual reports for five years containing the following information:

1. For the last five years (and the latest quarter available), data for U.S. merchandise trade and U.S. services trade with sub-Saharan Africa, including statistics by country, by major sectors, and by the top 25 commodities, as well as statistics on imports from sub-Saharan Africa under the GSP program by country and major product categories/commodities.

2. Country-by-country profiles of the economies of each sub-Saharan African country, including information on major trading partners, by country.

3. A summary of the trade, services, and investment climates in each of the countries in sub-Saharan Africa, including a description of the basic tariff structure (e.g., the average tariff rate and the average agricultural tariff rate). The summaries should also include information on significant impediments to trade, including any import bans.

4. Updates on regional integration in sub-Saharan Africa and statistics on U.S. trade with major regional groupings (COMESA, EAC, ECOWAS, IGAD, SACU, SADC, and WAEMU). Where applicable, information should be provided on the regional group's tariff structure.

5. A description of the U.S. tariff structure for imports from Africa.

6. A summary of U.S. and total foreign direct investment and portfolio investment in sub-Saharan Africa.

7. Information on sub-Saharan African privatization efforts based on publicly available information.

8. A summary of multilateral and U.S. bilateral assistance to the countries of sub-Saharan Africa.

The USTR requested that the Commission provide its first report by December 2000, and annually for a period of 4 years thereafter. The 48 countries of sub-Saharan Africa covered in this investigation include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Cote d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

Written Submissions

The Commission does not plan to hold a public hearing in connection with this investigation. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. The

Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules (19 CFR 201.6). All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than August 31, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: May 16, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–13075 Filed 5– 23–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Notice of Fairness Hearing

AGENCY: Disability Rights Section, Civil Rights Division, DOJ.

ACTION: Notice of fairness hearing.

SUMMARY: The Civil Rights Division is announcing that the Court will hold a fairness hearing in *United States* v. *City and County of Denver & the Denver Police Department* (Civil Action No. 96–K–370 (D. Colo.)). At the hearing, the United States and the City of Denver will ask the Court to approve the Consent Decree filed by the parties to resolve this case. The Court will also consider any objections to the Consent Decree by persons who may be affected.

DATES: Objections to the Consent Decree are due by June 8, 2000. The fairness hearing will be held on July 7, 2000 at 9:30 a.m. See **SUPPLEMENTARY INFORMATION** for more information on the procedure for filing objections.

ADDRESSES: Address all objections to the Consent Decree to James R. Manspeaker, Clerk, United States Courthouse, 1929 Stout Street, Room C–145, Denver, CO 80294. The fairness hearing will be held at the United States District Court for the District of Colorado, United States Courthouse, Courtroom C–401, 1929 Stout Street, Denver, CO 80294.

FOR FURTHER INFORMATION CONTACT:

Eugenia Esch, Civil Rights Division, P.O. Box 66738, Washington, DC 20035–6738; 202–514–3816; or
Steven W. Moore, City Attorney's Office, 1437 Bannock Street, Room 353, Denver, CO 80202; 720–913–3100.

SUPPLEMENTARY INFORMATION: Under 42 U.S.C. 12111–12134, and 42 U.S.C. 2000e–2(n), the Civil Rights Division announces that a fairness hearing will be conducted by the Court in the case of *United States* v. *City and County of Denver & the Denver Police Department* (Civil Action No. 96–K–370 (D. Colo.)) at the time and place listed above. On May 9, 2000, the United States and the City and County of Denver submitted a proposed Consent Decree (''Decree'') which resolved all issues raised by the Complaint charging employment discrimination on the basis of disability in violation of the Americans with Disabilities Act.

Under the Decree, the City of Denver has agreed to specific injunctive and remedial relief and to create a new reassignment policy for the Denver Police Department. The Decree also provides for back pay relief for eleven (11) individuals. A copy of the Decree can be obtained by writing or calling Eugenia Esch or Steven W. Moore at the addresses or phone numbers listed above.

At the hearing, the United States and the City of Denver will ask the Court to approve the Decree. The Court will also consider any objections to the Decree by persons who may be affected. If you believe that your rights have been or will be affected by the Decree, you have the right to object.

Any objection must be in writing and sent to the Clerk of the Court at the address above. Your objection must be filed with the Clerk of the Court by the date listed above. Only written objections will be considered by the Court at the fairness hearing. Written objections should state the name and number of this case (*United States* v. *City and County of Denver & the Denver Police Department* (Civil Action No. 96–K–370 (D. Colo.)); the objector's name, current address, home and work telephone numbers; the reason(s) for and a description of the objection(s); a description of any documents supporting the objector's position; the name and address of the objector's attorney, if any; and a statement as to whether the objector wishes to be heard at the fairness hearing.

Dated: May 19, 2000.

John Wodatch,

Chief, Disability Rights Section.

[FR Doc. 00–13054 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'' announces the availability of grants to support the hiring of new, additional civilian support positions under COPS Making Officer Redeployment Effective (''COPS MORE 2000''). Eligible applicants under COPS MORE 2000 are those state, local and other public law enforcement agencies, Indian tribal governments, other public and private entities, and multi-jurisdictional agencies that employ career law enforcement officers.

DATES: COPS MORE 2000 Application Kits will be available after May 30, 2000. The COPS Office will accept applications for COPS MORE 2000 from May 30, 2000 through July 14, 2000. Applications received postmarked on or before June 30, 2000 will be given priority consideration.

ADDRESSES: COPS MORE 2000 Application Kits may be obtained by writing to COPS MORE 2000, The Department of Justice Response Center, 1100 Vermont Avenue NW, Washington, DC 20530, or by calling the Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: http://www.usdoj.gov/cops. Completed application kits should be sent to COPS MORE 2000, 7th Floor, COPS Office, 1100 Vermont Avenue NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers

devoted to community policing on the streets and rural routes in this nation. COPS MORE 2000 is designed to expand the time available for community policing by current law enforcement officers, rather than fund the hiring or rehiring of additional law enforcement officers.

COPS MORE 2000 permits eligible agencies to seek funding to hire new, additional civilian support positions. To qualify for funding, civilian positions must be hired after the COPS MORE 2000 grant award start date and must increase the level of locally-funded civilian positions budgeted irrespective of the grant.

As a result of this funding, the number of officers redeployed by agencies in community policing must be equal to or greater than the number of officers that would result from grants of the same amount for hiring new officers. Application Kits will be available after May 30, 2000. Completed Applications Kits must be received by the COPS Office by July 14, 2000. Applications received postmarked on or before June 30, 2000 will be given priority consideration.

Applicants must provide a thorough explanation of how the proposed redeployment funds will actually result in the required increase in the number of officers deployed in community policing. Additionally, the applicant must specify within the COPS MORE 2000 Application a plan for retaining the additional civilian positions and continuing the increased level of redeployment into community policing with state or local funds following the conclusions of COPS MORE 2000 funding. Technical assistance with the development of community policing plans will be provided to jurisdictions in need of such assistance. Grants will be made for up to 75 percent of the cost of the civilian salaries up to $25,000 for one year, with the remainder to be paid by state or local funds. Waivers of the non-federal share will be considered upon a showing of severe fiscal distress. COPS redeployment funds may not be used to replace funds that eligible agencies otherwise would have devoted to civilian hiring.

An award under COPS MORE 2000 will not affect the eligibility of an agency's application for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: May 17, 2000.

Thomas C. Frazier,

Director.

[FR Doc. 00–13018 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Justice Management Division; Notice of Availability of the Revised FAIR Act Inventory

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 2(c)(2)(B) of the Federal Activities Inventory Reform Act, notice is hereby given that the revised inventory of activities considered not to be inherently governmental functions is now publicly available. As a result of the challenges and appeals submitted predominantly by Federal employee unions, several functions have been deleted from the list that relate to law enforcement activities. A copy of the revised inventory may be obtained by requesting it through one of the following: E-mail to *larry.silvis2@usdoj.gov;* fax (202) 514–6145; or call Larry Silvas on (202) 616–3754.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 00–13055 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities Comment Request

ACTION: Notice of Information Collection Under Review: Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 15, 2000 at 65 FR 13990, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–485 and I–485 Supplement A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act, and it allows the Service to collect information needed for reports to be made to different government committees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents if 265,097 at 5.25 hours per response; I–485 Children respondents if 208, 291 at 4.5 hours per response; and I–485 Supplement A respondents if 50,000 at 13 minutes (.216) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s):* 2,339,869.

If you have additional comments suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13047 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Report of Complaint.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 17, 2000 at 65 FR 14626, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service during that period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Report of Complaint.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–847. Border Patrol Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to establish a record of complaint and to initiate an investigation of misconduct by any officer of the INS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 63 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13044 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Application to Preserve Residence for Naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in **Federal Register** on March 22, 2000 at 65 FR 15356, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23,

2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Adjudications Division, Immigration and Naturalization service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information will be used to determine whether an alien who intends to be absent from United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13045 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Affidavit of Support.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 22, 2000 at 65 FR 15355, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 23, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection*: Extension of currently approved collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–134, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected by this form is used to determine whether the applicant for the benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection

instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 19, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13046 Filed 5–23–00; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 171. ''Duplication Request''.

2. *Current OMB approval number:* OMB 3150–0066.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Individuals or companies requesting document duplication.

5. *The number of annual respondents:* 16,800.

6. *The number of hours needed annually to complete the requirement or request:* 1,109 hours (16,800 forms X .066hours/form) or about 4 minutes per form.

7. *Abstract:* This form is utilized by individual members of the public requesting reproduction of publicly available documents in NRC's Headquarters Public Document Room. Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

Submit, by July 24, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 17th day of May 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–13065 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6394–MLA; ASLBP No. 00–777–05–MLA]

Department of the Army, U.S. Army Research Laboratory; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that: (1) A single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

Department of the Army, U.S. Army Research Laboratory, Depleted Uranium Study Area of the Transonic Range, Aberdeen Proving Ground, Maryland

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted by Aberdeen Proving Ground Superfund Citizens Coalition (APGSCC). The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission staff concerning issuance of an amendment to Source Material License No. SMB–141. The application requests decommissioning of the Depleted Uranium Study Area (DUSA) of the Transonic Range at the Department of the Army's U.S. Army Research Laboratory facility in Aberdeen Proving Ground, Maryland. The notice of consideration of the application and opportunity for hearing was published in the **Federal Register** at 65 FR 17,321 (Mar. 31, 2000).

The Presiding Officer in this proceeding is Administrative Judge Ivan W. Smith. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Smith and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Ivan W. Smith, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Issued at Rockville, Maryland, this 18th day of May 2000.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00– 13059 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01– P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 119th meeting on June 13–15, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, June 13, 2000—8:30 a.m. Until 5:00 p.m.

A. *8:30 a.m.–10:30 a.m.: ACNW Planning and Procedures* (Open)—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

B. *10:45 a.m.–12:30 p.m.: Low Level Waste Branch Technical Position on Performance Assessment* (Open)—The Committee will review and provide comments on the final draft version of this branch technical position (BTP). The NRC staff will discuss the resolution of public comments received on the BTP.

C. *1:30 p.m.–3:00 p.m.: West Valley Policy Public Comments* (Open)—The Committee will hear and discuss public comments on the West Valley Demonstration Project decommissioning plan. The Committee will discuss the current status of the license termination plan with representatives of the NRC staff.

D. *3:15 p.m.–5:00 p.m.: Prepare for the Next Public Meeting with the Commission* (Open)—The ACNW will begin preparation for the next public meeting with the Commission. Potential topics for discussion include: NRC's 10 CFR part 63, Disposal of High-Level Radioactive Waste in a Proposed Geological Repository at Yucca Mountain, Nevada; the recent Committee advice on the control of solid material; highlights of the Committee's recent European trip; the Defense In-Depth philosophy; and the ACNW's 2000 Action Plan.

Wednesday, June 14, 2000—8:30 a.m. Until 5:00 p.m.

E. *8:30 a.m.–10:30 a.m.: Proposed Yucca Mountain Repository Design Features* (Open)—Representatives of the DOE will present the status of the design for the proposed high-level waste repository at Yucca Mountain. The latest engineered features will be discussed.

F. *10:45 a.m.–12:30 p.m.: Department of Energy's (DOE) Repository Safety Strategy*—Representatives of the DOE will discuss the safety strategy for the proposed Yucca Mountain high-level waste repository. This may include a comparison of their principal factors associated with the proposed repository to the NRC staff's list of Key Technical Issues. There will also be a summary of Yucca Mountain specific siting guidelines in 10 CFR part 963.

G. *1:30 p.m.–3:00 p.m.: Status of the NRC LLW Program* (Open)—The Committee will review the status of the NRC's low-level radioactive waste program with representatives of the NRC staff's Uranium Recovery and Low-Level Waste Branch.

H. *3:15 p.m.–5:00 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss planned reports on the following topics: NRC's plans to provide sufficiency comments on the DOE's Site Recommendation Considerations Report; the Use of Defense In-Depth philosophy; Risk-Informed Approaches to Nuclear Materials Regulatory Applications; Comments on the LLW BTP on Performance Assessment; High-Lights of the ACNW Visit to the U.K. and France; and comments on draft regulatory guides, DG–1067, ''Decommissioning of Nuclear Power Reactors'' and DG–1071, ''Standard Format and Content For Post-Shutdown Decommissioning Activities.''

Thursday, June 15, 2000—8:30 a.m. Until 5:00 p.m.

I. 8:30 a.m.—9:30 a.m.: *Meeting with the Director of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards* (Open)—The Committee will meet with the Director to discuss items of mutual interest.

J. *9:30 a.m.–10:00 a.m.: DG–1067 and DG–1071*—The ACNW will consider two draft regulatory guides, DG–1067, ''Decommissioning of Nuclear Power Reactors,'' and DG–1071, ''Standard Format and Content for Post-Shutdown Decommissioning Activities.''

K. *10:00 a.m.–2:00 p.m.: Complete ACNW Reports* (Open)—Complete preparation of ACNW reports noted in item H.

L. *2:00 p.m.–3:00 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the

videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 17, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–13061 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 7–9, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

Wednesday, June 7, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Resolution of Generic Safety Issue-173A, ''Spent Fuel Storage Pool for Operating Facilities'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed resolution of Generic Safety Issue-173A.

10:15 A.M.–11:45 A.M.: Regulatory Effectiveness of the Station Blackout Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the review performed by the staff to determine the regulatory effectiveness of the Station Blackout Rule.

12:45 P.M.–2:15 P.M.: Proposed Final Standard Review Plan Section and Regulatory Guide Associated with the Revised Source Term Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Standard Review Plan Section and Regulatory Guide associated with the application of the revised source term for operating nuclear power plants.

2:30 P.M.–4:30 P.M.: Assessment of the Quality of Probabilistic Risk Assessments (PRAs) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's proposal to address PRA quality until the industry standards have been completed, including the potential role of industry PRA certification process.

4:30 P.M.–5:30 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

5:30 P.M.–7:00 P.M. : Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, June 8, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:00 A.M.: Performance-Based Regulatory Initiatives (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a draft Commission Paper associated with performance-based regulatory initiatives and related matters.

10:15 A.M.–11:30 A.M.: Use of Industry Initiatives in the Regulatory Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding use of industry initiatives in the regulatory process.

11:30 A.M.–12:00 Noon: Safety Culture at Operating Nuclear Power Plants (Open)—The Committee will hear a presentation by and hold discussions with Mr. Sorensen, ACRS Senior Fellow, regarding the safety culture at operating nuclear power plants.

1:00 P.M.–1:30 P.M.: Visit to Davis Besse Nuclear Power Plant and Meeting with NRC Region III Personnel (Open)—The Committee will hear a presentation by and hold discussions with Mr. Singh, ACRS Senior Staff Engineer, regarding the proposed schedule for touring the Davis Besse Nuclear Power Plant, specific plant areas to be visited, proposed topics for discussion with representatives of the licensee, and the NRC Region III Office.

1:30 P.M.–2:00 P.M.: Proposed Plan and Assignments for Reviewing License Renewal Guidance Documents (Open)—The Committee will discuss the proposed plan and member assignments for reviewing the license renewal guidance documents (Standard Review Plan, Regulatory Guide, and Generic Aging Lessons Learned II Report).

2:00 P.M.–2:15 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:15 P.M.–3:00 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

3:00 P.M.–4:00 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

4:00 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, June 9, 2000

8:30 A.M.–2:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

2:30 P.M.–3:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained

by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:l5 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 18, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–13060 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Joint Meeting of the Subcommittees on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittees on Plant Operations and Fire Protection will hold a joint meeting on June 14, 2000, NRC Region III Office, 801 Warrenville Road, Lisle, Illinois.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 14, 2000—8:30 a.m. Until the Conclusion of Business

The Subcommittees will discuss items of mutual interest with the representatives of NRC Region III Office, including plant performance review process, implementation challenges associated with the revised inspection and assessment programs, and fire protection issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Region III Office, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 17, 2000.

Richard K. Major,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–13062 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 22, 29, June 5, 12, 19, and 26, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 22

Thursday, May 25

8:30 a.m. Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Joe Shea, 301–415–1727)

10:15 a.m. Briefing on Status of Regional Programs, Performance and Plans (Public Meeting) (Contact: Joe Shea, 301–415–1727)

1:25 a.m. Affirmation Session (Public Meeting)

a: Hydro Resources, Inc., Docket No. 40–8968–ML, Memorandum and Order (Financial Assurance for Decommissioning Issues), LBP–99–13, 49 NRC 233 (March 9, 1999); and Memorandum and Order (Motion to Hold in Abeyance), LBP–99–40 (October 19, 1999); and,

b: Final Rule: ''Elimination of the Requirement for Noncombustible Fire Barrier Penetration Seal Materials and Other Minor Changes'' (10 CFR Part 50) (WITS 199800128) (Contact: Ken Hart, 301–415–1659)

1:30 p.m. Briefing on Improvements to 2.206 Process (Public Meeting) (Contact: Andrew Kugler, 301–415–2828)

Week of May 29—Tentative

Tuesday, May 30

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

Week of June 5

There are no meetings scheduled for the Week of June 5.

Week of June 12—Tentative

Tuesday, June 13

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

1:00 p.m. Meeting with Korean Peninsula Energy Development

Organization (KEDO) and State Department (Public Meeting) (Contact: Donna Chaney, 301–415–2644)

Week of June 19—Tentative

Tuesday, June 20, 2000

9:25 a.m. Affirmation Session (Public Meeting) (If needed)
9:30 a.m. Briefing on Final Rule—Part 70—Regulating Fuel Cycle Facilities (Public Meeting)
1:30 p.m. Briefing on Risk-Informed Part 50, Option 3 (Public Meeting)

Week of June 26—Tentative

There are no meetings scheduled for the Week of June 26.

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc. gov.

Dated: May 19, 2000.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 00–13151 Filed 5–22–00; 1:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Units 1 and 2; Notice of Correction to Biweekly Notice of Issuance of Amendments to Facility Operating Licenses

On May 17, 2000 (65 FR 31364), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 31364, under Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, the amendment number was incorrectly noted. It should read, ''Amendment Nos.: 244 and 225.

Dated at Rockville, Maryland this 18th day of May 2000.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–13064 Filed 5–23–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42786; File No. SR–Amex–99–49]

Self-Regulatory Organizatons; American Stock Exchange LLC; Order Partially Approving Proposed Rule Change Relating to Investment Series of the iShares Trust Based on Foreign Stock Indexes

May 15, 2000.

I. Introduction

On December 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to listing and trading investment series of the iShares trust based on foreign stock indexes. The proposed rule change was published for comment in the **Federal Register** on March 28, 2000.[3] No comments were received on the proposal. This order approves the proposed rule change with respect to the iShares S&P Europe 350 Index Fund and the iShares S&P/TSE 60 Fund.

II. Description of the Proposal

The Exchange proposes to list and trade under Amex Rules 1000 *et seq.* the following investment series (each a ''Fund'' and collectively, the ''Funds'') of the iShares SM Trust[4] (''Trust'') based on indexes (referred to herein as ''Underlying Indices'') comprised in whole or part of equity securities issued by foreign issuers as follows: (1) iShares S&P Europe 350 Index Fund and (2) iShares S&P/TSE 60 Fund. Amex Rules 1000A *et seq.* apply to Index Funds Shares.

In addition to the Funds listed above, the Trust's 1940 Act exemptive application requests that the exemptive relief sought in the Application apply to Funds (referred to herein as ''Additional Funds'') based on the following indexes: (1) S&P Euro Index; (2) Dow Jones Global Media Sector Index; (3) Dow Jones Global Pharmaceuticals Sector Index; and (4) Dow Jones Global Telecommunications Sector Index. Funds on these indexes will not be the subject of the Trust's initial registration statement, which will cover the iShares S&P Europe 350 Index Fund and the iShares S&P/TSE 60 Fund. The Exchange proposes to list and trade the Additional Funds, listed above, that are the subject of the Trust's 1940 Act exemptive application after an effective registration statement is in place for those funds. All descriptions herein that apply to the two proposed iShares Funds also apply to the Additional Funds.

A detailed description of each Underlying Index for the Funds and the Additional Funds, as prepared by the compilers of the Underlying Indices, is available in the Commission's Public Reference Room as Exhibit B. These descriptions include information regarding component selection criteria, issue changes, index maintenance, index availability, index description, and industry group distribution by market capitalization.

''Passive'' or Indexing Investment Approach

The investment objective of each Fund is to provide investment results that, before expenses, correspond generally to the price and yield performance of companies in the Underlying Index. In seeking to achieve the respective investment objective of each Fund, Barclays Global Fund Advisors, (''the Advisor''), will utilize some variety of ''passive'' or indexing investment approach. Certain Funds will use a replication strategy by which an index fund seeks to match an Underlying Index's performance, before fees and expenses, by buying and selling all of the Underlying Index's securities in the same proportion as they are reflected in the Underlying Index. These funds reserve the right not to invest in every security in the Underlying Index if the Adviser believes it is not practical to do so under the circumstances. It is anticipated that the iShares S&P/TSE 60 Fund will use a replication strategy.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42543 (March 17, 2000), 65 FR 16433.

[4] The Trust has filed with the Commission an Application for Orders (''Application'') under Sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940 Act'') as amended, for the purpose of exempting the Trust from various provisions of the 1940 Act and Amex Rules thereunder (File No. 812–11598).

Representative Portfolio Sampling Approach

Other Funds may not hold all or most of the securities in the Underlying Index (''Component Securities''). This may be the case, for example, when there are substantial costs involved in compiling an entire Underlying Index basket that contains scores of Component Securities or, in certain instances, when a Component Security is illiquid. In cases such as these, a Fund will attempt to hold a representative sample of the Component Securities in the Underlying Index, which will be selected by the Adviser utilizing quantitative analytical models in a strategy known as ''representative portfolio sampling.'' It is anticipated that the iShares S&P Europe 350 Index Fund will use this technique.

No Fund will concentrate *i.e.,* hold more than 25% of its assets in the stocks of a single industry or a group of industries) its investments in issuers of one more more particular industries, except that a Fund will concentrate to the extent that its Underlying Index concentrates in the stocks of such particular industry or industries.

Under this strategy, each security is considered for inclusion in a Fund based on its contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of a Fund so that it will have capitalization, industry and fundamental investment characteristics that perform like those in the corresponding Underlying Index. From time to time, adjustments will be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index, or to maintain compliance as a ''regulated investment company'' under the Internal Revenue Code.[5] Certain of these Funds may also hold some securities that are not components of the relevant Underlying Index if the Adviser decides it is appropriate in view of such Funds' investment objectives and investment or tax constraints. If the representative portfolio sampling technique is used, a Fund will not be expected to track its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weightings as the Underlying Index. It is anticipated that, over time, the Adviser in such case will be able to employ representative portfolio sampling techniques such that the expected tracking error of a Fund relative to the performance of its Underlying Index will be less than 5 percent.

Procedures for Creation and Redemption of iShares of the Funds

Procedures for the creation and redemption of iShares of the proposed Funds are similar to procedures for creation and redemption of certain other Index Fund Shares based on a foreign stock index currently listed on the Amex (*i.e.,* WEBS), which do not utilize processes of the National Securities Clearing Corporation ''NSCC'') in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of iShares on creation and redemption. In contrast, creation and redemption procedures applicable to Portfolio Depositary Receipts, such as SPDRs and Index Fund Shares, such as Select Sector SPDRs based on domestic stock indexes, utilize such NSCC processes.

Purchase or Creation of Creation Unit Aggregations

The trust will issue and sell iShares of each Fund only in Creation Unit Aggregations[6] on a continuous basis through the distributor, SEI Investments Distribution Company (''the Distributor''), without a sales load. The price will be the net asset value (''NAV'') next determined after receipt, on any business day, of an order in proper form. The consideration for purchase of Creation Unit Aggregations of a Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (the ''Deposit Securities'') per each Creation Unit Aggregation of the stocks and weightings in the relevant Fund's portfolio (''Fund Securities'') and an amount of cash (the ''Cash Component'') computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of any Fund. The Trust will impose a Transaction Fee in connection with the creation and redemption of Creation Unit Aggregations.

The Cash Component is an amount equal to the Balancing Amount. The ''Balancing Amount'' is an amount equal to the difference between the NAV of the iShares (per Creation Unit Aggregation) and the ''Deposit Amount.'' The ''Deposit Amount'' is an amount equal to the market value of the Deposit Securities. If the Balancing Amount is a positive number (*i.e.,* the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the Cash Component will be paid to the Trust by the Creator. If the Balancing Amount is a negative number (*i.e,* the NAV per Creation Unit Aggregation is less than the Deposit Amount), the creator will receive cash in an amount equal to the differential.

The Adviser, through NSCC, will make available on each Business Day immediately prior to the opening of business on the Amex, currently 9:30 a.m., New York time, the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund. Such Fund Deposit is applicable, subject to any adjustments, to effect creations of Creation Unit Aggregations of a given Fund, until such time as the next-announced composition of the Deposit Securities is made available.

It is anticipated that the deposit of Deposit Securities and the Cash Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Unit Aggregations are separable upon issuance into identical shares that are listed and traded on the Amex.

Redemption of Creation Unit Aggregations

Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the fund through the Distributor and only on a business day. Immediately prior to the opening of business on the Amex on each business day, the Adviser, through NSCC, will identify the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests for each Fund received in proper form on that day.

[5] In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. One requirement that as of the close of each quarter of the Fund's taxable year: (1) At least 50 percent of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5 percent of the value of the Fund's assets and not greater than 10 percent of the outstanding voting securities of such issuer, and (2) not more than 25 percent of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

[6] iShares cannot be redeemed individually but must be redeemed in Creation Unit Aggregations applicable to the specific Fund.

Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation generally consist of Fund Securities—as announced by the Adviser on the Business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the iShares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount'').

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem iShares in cash, and the redeeming beneficial owner will be required to receive redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its iShares based on the NAV of iShares of the relevant Fund next determined after the redemption request is received in proper form. A Fund may also, in its sole discretion, upon request of a shareholder, provide the redeemer a portfolio of securities that differs from the exact composition of the Fund Securities but does not differ in NAV.

Availability of Information Regarding Fund Shares and Underlying Indices

In addition to the list of names and amount of each security constituting the current Deposit Securities of the Portfolio Deposit, the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day. The Exchange expects to disseminate, every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (''CTA''), an amount per Fund Share representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis.

The value of each Underlying Index will be updated intra-day on a real-time basis as individual Component Securities change in price. These intra-day values of the Underlying Indices will be disseminated every 15 seconds throughout the trading day. In addition, these organizations will disseminate a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market. Each Fund will make available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the cash-balancing amount. The NAV for each Fund will be calculated and disseminated daily. In addition, the Adviser maintains a website that provides information about the returns and methodology of various indices, and will include the relevant Underlying Index for each Fund. The Trust also intends to maintain a website that will include the relevant prospectuses and additional quantitative information that is updated on a daily basis, including daily trading volume and closing price for each Fund. The Amex also intends to disseminate a variety of data with respect to each Index Series on a daily basis by means of CTA and Consolidated Quotation High Speed Lines, including shares outstanding and cash amount per Creation Unit Aggregation, which will be made available prior to the opening of the Amex. The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of Indicative Portfolio Value

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem iShares based on indexes with non-U.s. components, it is expected that the Exchange will disseminate thought the facilities of the CTA an updated indicative portfolio value (''Value'') for each of the Funds traded on the Exchange as calculated by a securities information provider (''Value Calculator''). It is anticipated that the methodology utilized in connection with the Funds will be similar to procedures used to calculate the Value for WEBS currently trading on the Exchange. The Value will be disseminated on a per iShares basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time. The equity securities values included in the Value are the values of the Deposit Securities, which are the same as the portfolio that is to be utilized generally in connection with creations and redemptions of iShares in Creation Unit Aggregations on that day. The equity securities included in the Value reflects the same market capitalization weighting as the Deposit Securities in the portfolio for the particular iShares Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes the Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the Value on a per iShares basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the Value that will be disseminated by the Amex by 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per iShares basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.,* in the case of extensive rebalancing of multiple securities in a Fund at the same time of the Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of a Fund would not be different that circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with iShares trading on the Exchange or the creation or redemption of iShares.

For each Fund, the Value Calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market(s) for securities in the Fund portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable Cash Component for each Fund.

For Funds that include foreign stocks, the principal foreign markets for which have trading hours overlapping regular Amex trading hours, the Value Calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.

Other Characteristics of iShares

It is anticipated that a minimum of two Creation Unit Aggregations for each Fund will be outstanding at the commencement of trading on the Exchange. The number of shares per Creation Unit Aggregation is anticipated to be approximately 50,000 shares.

Fund shares will be registered in book-entry form through the Depository Trust Company (''DTC''). Trading in Fund shares on the Exchange will be effected until 4:15 p.m. each business day. The minimum trading increment under Amex rule 127 for Fund Shares will be 1/64 of $1.00.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with Internal Revenue Code distribution requirements. Certain of the Funds intend to make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

The Exchange, in an information circular, will inform member firms, prior to commencement of trading, that investors purchasing iShares will be required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein.[7]

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of iShares is $5,000 for each Fund. In addition, the annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares for all Funds combined.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security other than an option, which is covered by Amex rule 950(f) and Commentary thereto, the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated iShares as eligible for this treatment.[8]

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex rule 918C(b) in exercising its discretion to halt or suspend trading in a Fund. These factors include: (1) The extent to which trading is not occurring in stocks underlying the specific underlying index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair orderly market are present. Trading in iShares will halt in the event that market-wide circuit breakers are triggered pursuant to Amex to Rule 117.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[9] Specifically, the Commission finds that the proposal to list and trade the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund will provide investors with a convenient and less expensive way of participating in the securities markets, including involvement with equities issued by foreign issuers. The Exchange's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating or to a large extent representing the performance of several portfolios of stock a negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in resulting, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[10]

Amex Rules 1000 A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.[11] The Exchange currently lists under Amex Rules 1000A *et seq.* eighteen series of World Equity Benchmark Shares (''WEB TM'') based on Morgan Stanley Capital Internation foreign stock indices; [12] and nine series of Select Sector SPDRs® based on Selected Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500 ® Index.[13] Similar to these other types of Index Fund Shares, the Commission believes that the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable Underlying Index. The iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and, (3) reduce transactions costs for trading a portfolio of securities.

Although these iShares are not leveraged instruments, and, therefore do not possess any of the attributes of stock index options, their prices will be derived and based on the value of the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of these

[7] In its 1940 Act exemptive application, the Trust requests relief from the prospectus delivery requirements imposed by Section 24(d) of the 1940 Act. The Exchange will inform member firms of the prospectus delivery requirements applicable at commencement of trading.

[8] *See* Securities Exchange Act Release No. 29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex rule 154, Commentary .04(c).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 3647 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[12] ''World Equity Benchmark Shares'' and ''WEBS'' are service marks of Morgan Stanley Group, Inc. *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

[13] ''S&P®'', ''S&P 500®'', and ''SPDRs®'' are trademarks of The McGraw-Hill Companies, Inc., and ''Select Sector SPDR'' is service mark of The McGraw-Hill Companies, Inc., *See* Securities Exchange Act Release 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998).

Funds is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for these Funds is based on a portfolio of securities. Nevertheless, the Commission believes that the unique nature of the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund raises certain product design, disclosure, trading and other issues that must be addressed.

Generally

The Commission believes that the proposed iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon. In this regard, the Commission notes that the Funds will be developed and maintained using two different investment approaches. The iShares S&P/TSE 60 Fund will use a replication strategy by which the Fund will seek to match the Underlying Index's performance, before fees and expenses, by buying and selling all of the Underlying Index's securities in the same proportion as they are reflected in the Underlying Index. The Fund may not invest in every security in the underlying index if the Adviser believes it is not practical to do so.

The iShares S&P Europe 350 Index Fund will be managed using the representative portfolio sampling approach. Under this strategy, the Advisor will seek to construct the portfolio of a Fund so that it will consist of securities that have capitalization, industry, and fundamental investment characteristics that perform like those in the corresponding Underlying Index. The Fund may not hold all or most of the securities in the Underlying Index and may hold some securities that are not part of the Underlying Index. However, the Fund will not concentrate more than 25% of its assets in the stocks of a single industry or a group of industries, except to the extent that its Underlying Index does so. The Exchange represents that the tracking error on the Fund relative to the performance of its Underlying Index will be less than 5 percent.

The aim of these component selection processes is to make index components highly representative of the overall economic sector composition and market capitalization of a given market. The Commission believes that the aforementioned criteria should serve to ensure that the underlying securities of these indexes are well capitalized and actively traded.

Listing and Trading

The Commission finds that the Amex's proposal contains adequate rules and procedures to govern the listing and trading of the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund. These Funds will be subject to the full panoply of Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex. As such, these Funds are subject to the Amex rules governing the trading of equity securities, including, among others, rules governing trading halts, notices of members, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order. Amex surveillance procedures for Index Fund Shares will also be applicable to the iShares S&P Europe 350 Index and iShares S&P/TSE 60 Fund. The Commission believes that the surveillance procedures developed by the Amex for Index Fund Shares are adequate to address the concerns associated with the listing and trading of these Funds, including any concerns associated with purchasing and redeeming Creation Units.

In addition, the Exchange has designated that a minimum of two creation units, approximately 100,000 shares, will be required to be outstanding at start-up of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the Fund shares in book-entry form through DTC, managing the distribution of dividend from net investment income, if any, and permitting beneficial owners of the Funds to offer the DTC book-entry Dividend Reinvestment Service are characteristics of the Funds that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market.

Furthermore, the Commission believes that the Exchange's proposal to trade the iShares S&P Europe 350 Index Fund and iShares S&P/TSE 60 Fund in minimum fractional increments of 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Funds. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable as is the proposed method for calculating the annual fee.

Dissemination of Information Regarding the Funds

The Commission believes that the Values and figures that the Exchange proposes to have disseminated for the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund will provide investors with timely and useful information concerning the value of the individual Funds. The Exchange represents that the Value information will be disseminated, every 15 seconds during regular Amex trading hours, through the facilities of the CTA and will reflect currently-available information concerning the value of the assets comprising the Deposit Securities and the Cash Component. The intra-day value of the Underlying Index also will be disseminated every 15 seconds throughout the trading day. On a daily basis, the Fund will make available the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, and the NAV will be calculated and disseminated. The Exchange represents that the Fund will maintain a website containing the prospectuses and relevant material that is updated daily, including trading volume and closing prices for each Fund. Additionally, the Exchange represents that it will disseminate on a daily basis the shares outstanding and cash amount per Creation Unit Aggregation.

Disclosure

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund. Investors purchasing iShares will be required to receive a fund prospectus prior to or concurrently with the confirmation of a transaction therein. Alternatively, as previously noted, the Funds will be subject to the Exchange's rules and procedures for Index Fund Shares. This includes the provisions in Commentary .03 to Amex Rule 1000A, which provides for delivery of a product description for series that have granted relief from the prospectus delivery requirements of the 1940 Act.[14] The prospectus or product description will address the special terms and

[14] *See* Securities Exchange Act Release No. 42787 (May 15, 2000) (approving delivery of product description in lieu of prospectus).

characteristics of the Funds, including a statement regarding their redeemability and method of creation, and a statement regarding the likelihood of whether such products will trade below, at, or above net asset value, based on the rule of discount or premiums.[15] The delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, Commentary .03 provides that a member or member organization must deliver a prospectus to a customer upon request.

The Commission also notes that prior to commencement of trading in the Funds, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in the iShares S&P Europe 350 Funds and iShares S&P/TSE 60 Fund. The circular also will inform members of their responsibilities under Amex Rule 411 in connection with customer transactions in these securities.

Accordingly, the Commission believes that the rules governing the trading of the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Scope of the Order

The Commission is approving the iShares S&P Europe 350 Fund and iShares S&P/TSE 60 Fund. Approval of iShares on the S&P Euro Index, Dow Jones Global Media Sector Index, Dow Jones Global Pharmaceuticals Sector Index, and Dow Jones Global Telecommunications Sector Index remains pending. Additionally, approval of other similarly structured products, or additional iShare Funds based on foreign stock indexes will require review by the Commission pursuant to Section 19(b) of the Act prior to being traded on the Exchange.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–99–49) is partially approved with respect to the iShares S&P Europe Index Fund and iShares S&P/TSE 60 Fund.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13003 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[15] As per telephone conversation between Mike Cavalier, Associate General Counsel, Amex, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on May 15, 2000.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–04951]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Westcoast Energy Inc., Common Stock, No Par Value, and Associated Common Stock Purchase Rights)

May 18, 2000.

Westcoast Energy Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and associated Common Stock Purchase Rights (referred to collectively herein as the ''Securities''), from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Company, which is based in Vancouver, British Columbia, and whose Securities are additionally listed on the Toronto Stock Exchange (''TSE''), in Canada, and on the New York Stock Exchange (''NYSE''), is seeking to withdraw the Securities from listing and registration on the PCX at this time in order to save the costs associated with such listing and related compliance.

The Company has stated that its application relates solely to the withdrawal of the Securities from listing and registration on the PCX and shall have no effect upon the Securities' continued listing and registration on the NYSE under section 12(b) of the Act.[3]

The withdrawal of the Securities from listing and registration on the PCX was approved by the Company's board of directors at a meeting held on February 15 and 16, 2000. Furthermore, the Company has included with its application a copy of a letter from the PCX indicating that the Equity Listings Committee of the PCX, at a meeting held on May 2, 2000, has approved the Company's request that the Securities be removed from listing and registration on the Exchange, pending final approval of the Commission.

Any interested person may, on or before June 9, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13067 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24459; 812–11976]

Yahoo! Inc.; Notice of Application

May 18, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY: Applicant Yahoo! Inc. (''Yahoo!'') seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant is a global Internet new media company that offers a branded network of media, commerce and communication services. On April 5, 2000, a temporary order was issued pursuant to section 3(b)(2) of the Act exempting applicant from all provisions of the Act until July 10, 2000.

Filing Dates: The application was filed on February 11, 2000 and amended April 5, 2000 and May 16, 2000.

Hearing for Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2000 and should be accompanied by proof of service on the applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609; Applicant, 3420 Central Expressway, Santa Clara, CA 95051.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526; or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Yahoo!, a Delaware corporation , was formed in 1995. Yahoo! states that it is a global Internet new media company that offers a branded network of media, commerce and communication services. Yahoo! develops, operates and markets advertising-supported online properties, including Yahoo!, a branded Internet navigational service that is among the most widely used and recognized search guides on the World Wide Web. Yahoo! states that it conducts its Internet and new media business directly and through wholly-owned and majority-owned subsidiaries and Yahoo! Japan, a company that it controls within the meaning of section 2(a)(9) of the Act.[1] Yahoo! states that it is not in the business of investing, reinvesting or trading in securities.

2. Yahoo! has expanded its Internet and new media business to Japan through Yahoo! Japan, which unlike Yahoo!'s other international subsidiaries, is not majority-owned or wholly-owned by Yahoo!. Yahoo! states that Yahoo! Japan was created in 1996 as a joint venture between Yahoo! and Softbank Corp. to establish and manage a Japanese version of the Yahoo! directory service, develop related Japanese online navigational services and conduct other related businesses. Yahoo! states that it currently owns 34% of the outstanding voting securities of Yahoo! Japan and Softbank Corp. owns 51%. Yahoo! states that Yahoo! Japan currently is a publicly traded company with shares listed on the Tokyo Stock Exchange. Yahoo! represents that Yahoo! Japan is not an investment company and is not relying on section 3(c)(1) or 3(c)(7) of the Act. As of December 31, 1999, Yahoo! states that the fair market value of Yahoo!'s interest in Yahoo! Japan was approximately $8.4 billion, accounting for over 90% of the value of Yahoo!'s total assets (exclusive of government securities and cash items) on an unconsolidated basis.

3. Yahoo! represents that it maintains a large cash position to help fund operations, research and development, and to take advantage of acquisition opportunities as they arise. Yahoo!'s cash position is currently invested in cash and government securities; Yahoo! plans to invest part of its cash position in higher-yielding corporate bonds and other high-quality debt securities that are consistent with the goal of capital preservation. Yahoo! represents that it has adopted a Corporate Investment Policy to ensure that its cash management investments consist of only certain high-quality predominately short-term debt instruments (together with cash items and government securities, ''Cash Management Investments''). Yahoo! represents that it needs sufficient cash for bona fide business purposes, such as funding operations, funding research and development and improvements to its network, and funding strategic acquisitions. Yahoo! also states that it does not engage in speculative short-term trading with its Cash Management Investments.

4. Yahoo! states that it makes certain small strategic, non-controlling investments in companies that can complement or enhance Yahoo!'s Internet and new media business (''Strategic Investments''). Yahoo! states that it carries these investments on its balance sheet as ''long-term'' assets and does not invest or trade in such securities for short-term or speculative purposes. As of December 31, 1999, the value of the Strategic Investments was less than 5% of the value of Yahoo!'s total assets (exclusive of government securities and cash items) on an unconsolidated basis. Yahoo! states that it does not hold Strategic Investments because of the possibility of gain resulting from an increase in the market price of the securities, but primarily as a means to enter into or solidify business relationships with companies to expand Yahoo!'s business lines. Yahoo! further states that it uses Strategic Investments as a way of outsourcing research and development instead of developing technology internally.

Applicant's Legal Analysis

1. Yahoo! seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which: (i) Are not investment companies; and (ii) are not relying on the exclusive from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

3. Yahoo! states that its interest in Yahoo! Japan represents over 90% of its total assets (exclusive of government securities and cash items) on an unconsolidated basis. Yahoo! states that it cannot rely upon rule 3a–1 under the Act because, although it owns over 25% of the outstanding voting securities of Yahoo! Japan, it does not primarily control Yahoo! Japan because another entity owns a larger percentage of voting securities.[2] If the interest in Yahoo! Japan is deemed to be an ''investment security'' (as that term is defined in section 3(a)(2) of the Act), Yahoo! may be deemed to be an investment company within the meaning of section 3(a)(1)(C) of the Act.

[1] Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

[2] Rule 3a–1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than government securities and securities of majority-owned subsidiaries and companies primarily controlled by it.

4. Yahoo! states that it views its controlling interest in Yahoo! Japan as an operating asset. Yahoo! represents that it plays a significant role in the management of Yahoo! Japan and is fully involved both directly and indirectly, in the operations of Yahoo! Japan. Yahoo! states that it directly oversees the operations of Yahoo! Japan through its involvement with the board of directors of Yahoo! Japan. Yahoo! further states that Yahoo! Japan operates under various agreements with Yahoo! that give Yahoo! significant power to direct the operations of Yahoo! Japan, including a licensing agreement that, among other things, sets minimum content specifications and subjects Yahoo! Japan to an international pricing policy designed by Yahoo! to allocate sales revenue involving more than one Yahoo! entity. Yahoo! argues that these facts demonstrate not only that Yahoo! controls Yahoo! Japan, but also that it is involved in the management and operations of Yahoo! Japan.

5. Section 3(b)(2) of the 1940 Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of business. Yahoo! requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

6. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income. [3]

a. *Historical Development.* Yahoo! states that since its inception in 1995, it has considered itself to be a company engaged in the Internet and new media business of developing and providing Internet-related products and services. Yahoo! represents that its business strategy has not changed since it outlined its business plan in its prospectus for the initial public offering of its securities in 1996. Yahoo! has used its revenue and raised capital to expand its operations into foreign countries, to expand its product and service lines and to acquire companies with complementary products or services.

b. *Public Representations of Policy.* Yahoo! states that it has never represented that it is involved in any business other than the Internet and new media business that develops and provides Internet-related products and services. Yahoo! asserts that it has consistently stated in its reports to stockholders, press releases and periodic reports filed with the Commission that it is an Internet and new media company. Yahoo! states that it emphasizes operating results and has never emphasized either its investment income or the possibility of significant appreciation from its Cash Management Investments or Strategic Investments as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* Yahoo! states that its board of directors and its officers spend almost all of their time on Yahoo!'s Internet and new media business. The board of directors' activities with respect to Yahoo!'s Cash Management Investments is minimal, limited to its adoption of the Corporate Investment Policy and periodically receiving reports. Yahoo! also states that only two of its approximately 2,000 employees spend any time with respect to its Cash Management Investments, and those employees spend only approximately 20% of their time in this manner. Yahoo! states that the amount of time that the board of directors dedicates to the Strategic Investments is small relative to the amount of time dedicated to Yahoo!'s business activities.

d. *Nature of Assets.* Yahoo! states that as of December 31, 1999, exclusive of cash items and government securities, over 90% of Yahoo!'s total assets, on an unconsolidated basis, was attributable to direct non-investment security assets and Yahoo!'s interests in wholly- and majority-owned subsidiaries and Yahoo! Japan. As of December 31, 1999, Yahoo represents that less than 5% of its total assets (exclusive of cash items and government securities), on an unconsolidated basis, were attributable to Strategic Investments. Yahoo further represents that Cash Management Investments comprised less than 10% of its total assets, as of December 31, 1999.

e. *Sources of Income.* Yahoo! states that for the year ended December 31, 1999, Yahoo!'s investment income comprised approximately 37% and its operating income comprised approximately 63% of Yahoo!'s gross income. Yahoo! further states that for the quarter ended March 31, 2000, Yahoo!'s investment income comprised approximately 44%, and operating income comprised approximately 57% of Yahoo!'s gross income. Moreover, Yahoo! states that 70% of the approximately $57 million of investment income it reported in the quarter ended March 31, 2000, resulted from the consolidation of certain joint venture operations following Yahoo!'s acquisitions of Geocities and broadcast.com, not from speculation in securities. Yahoo! notes that in the past its income from operations has fluctuated widely and Yahoo! has incurred substantial non-recurring costs in connection with acquisitions and product development. Yahoo! notes that the composition of its income, at-times, is not representative of Yahoo!'s activities as an operating company. Yahoo! believes that the sources of its revenue are more representative of Yahoo!'s activities as an operating company. Yahoo! states that as far back as 1996, Yahoo! generated 83% of its total revenue from sales of advertisements and 14% from investment income. For the year ended December 31, 1999, Yahoo states that it generated 94% of its total revenue from operating activities and the remaining 6% from investment income. Yahoo! expects that in the future the percentage of its total revenues derived from operating activities will ordinarily be over 90%.

7. Yahoo! thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. Yahoo! will continue to allocate and utilize its accumulated cash and Cash Management Investments for bona fide business purposes.

2. Yahoo! will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13002 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24457; 813–170]

Bain Capital, Inc. and BCIP Associates II; Notice of Application

May 17, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') granting an exemption from all provisions of the Act except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants Bain Capital, Inc. (''Bain Capital'') and BCIP Associates II (the ''Initial Investment Entity'') request an exemption from various provisions of the Act for an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Filing Dates: The application was filed on May 29, 1997, and amended on May 12, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 12, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES:

Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549–0609.

Applicants, Two Copley Place, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street NW, Washington, DC 20549–0102, or by telephone at (202) 942–8090.

Applicants' Representations

1. Bain Capital, A Delaware corporation, is a private equity investment firm. It manages private investment funds (the ''Bain Funds'') which are exempt from registration under the Act in reliance on sections 3(c)(1) and 3(c)(7) of the Act. Bain Capital is exempt from registration as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') in reliance upon section 203(b)(3) of the Advisers Act.

2. Applicants propose to offer various investment programs (''Investment Entities'') to Eligible Investors (as defined below) of Bain Capital and Bain Capital Holdings, LLC, a limited liability company which is being organized to carry on the business activities of Bain Capital and will be owned by key employees of Bain Capital (together with Bain Capital, the ''Company'').

The Initial Investment Entity has been established to enable Eligible Investors to participate in co-investment opportunities with the Bain Funds. The Initial Investment Entity is structured as a general partnership formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company.

A subsequent Investment Entity may be structured as a general partnership or as a domestic or offshore limited partnership, limited liability company, or corporation. The Investment Entities are established to reward and retain Eligible Employees (as defined below) and to attract highly qualified personnel to the Company. No Eligible Employee will be required to invest in any Investment Entity.

3. The Company will act as the managing partner (''Managing Partner'') of the Initial Investment Entity. The Managing Partner of subsequent Investment Entities will be the Company, a successor entity, (*i.e.,* an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization of the Company) or an affiliated person (as defined in section 2(a)(3)(C) of the Act) of the Company (''Control Affiliate''). A person serving as an investment adviser to an Investment Entity will be registered as an investment adviser under the Advisers Act, if required under applicable law.

4. No fee will be charged to an Investment Entity by the Managing Partner and no compensation will be paid by an Investment Entity or its Partners to the Managing Partner for its services in such capacity. No Investment Entity will be charged management fees by the Company, or any of its affiliates. The Managing Partner may require an Investment Entity to reimburse it for direct costs of disbursements and expenses that it incurs on behalf of such Investment Entity.

5. Interests in the Investment Entities (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1993 (the ''1933 Act'') or Regulation D under the 1933 Act and will be sold without a sales charge. Interests will be sold solely to ''Eligible Investors.''

Eligible Investors will consist of: (a) Eligible Employees (as defined below); (b) trusts and other investments vehicles of which the trustees, grantors and/or beneficiaries are Eligible Employees or of which the beneficiaries are immediate family members (spouses, parents, children, spouses of children, brothers, sisters, and grandchildren) of Eligible Employees and charitable organizations, including self-directed retirement plan vehicles (including individual retirement accounts); (c) partnerships, corporations or other entities all of the voting power of which is controlled by Eligible Employees; and (d) the Company.

Prior to offering interests in an Investment Entity to an Eligible Employee, the Managing Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Investment Entity without the benefit of regulatory safeguards. Eligible Employees will be experienced professionals in the leveraged buy out, venture capital, investment banking or management consulting business, or in related administrative, financial, accounting or operational activities.

6. An ''Eligible Employee'' is an individual who at the time of an offer for an Interest in an Investment Entity is:

(a) A professional or key administrative employee of the Company or a Control Affiliate, or a former professional employee of the Company or a Control Affiliate, and is an accredited investor meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the 1933 Act; or

(b) an employee of the Company or a Control Affiliate who: (i) Will be

involved in managing the finances or the day-to-day affairs of the Investment Entities or in locating, structuring or administering the investments made by the Investment Entities; (ii) has an individual rate of annual compensation from all sources of at least $120,000, (iii) has a reasonable expectation of having the same rate of annual compensation in each of the two immediately succeeding years; and (iv) has such knowledge and experience in financial and business matters that he will be capable of evaluating the merits and risks of the proposed investments. A maximum of 35 persons who do not meet the income requirements of Regulation D under the 1933 Act at the time an offer for an Interest is made will be admitted to any Investment Entity.

7. Before participating in an Investment Entity, Eligible Employees will be provided with a copy of the organizational documents of the Investment Entity, which will set forth the specific investment objectives and strategies of the Investment Entity, and a description of the relevant risks associated with an investment in an Investment Entity.

8. Each Investment Entity will send the Eligible Investors that participate in the Investment Entity (''Partners'') an annual repot regarding its operations which will contain unaudited financial statements. Within 90 days after the end of each fiscal year, or as soon as practicable thereafter, each Investment Entity will transmit to each Partner a report indicating its Share of the income or losses of the Investment Entity for federal income tax purposes for the fiscal year most recently ended.

9. An Investment Entity will maintain a separate class of capital accounts for Partners who are participating in a particular investment (the ''Participating Partners''). Capital contributions made to an Investment Entity by or on behalf of Participating Partners will be allocated pro-rata to the capital sub-accounts relating to a particular investment for such Participating Partners. Partners who do not participate in a particular investment will have no interest in, or capital sub-account with respect to, such investment. A Partner's percentage share will differ from one sub-account to another, such that each Partner's proportionate mix of investments is likely to differ from each other Partner's and from an Investment Entity's aggregate investments.

10. In addition to co-investment opportunities with the Bain Funds, the Managing Partner of the Initial Investment Entity may make other investment opportunities not related to Bain Fund investments available to one or more Partners who are Eligible Investors and in the case of any follow-on investment in a portfolio company, the Managing Partner may also, in its discretion, make such opportunity available to Partners who participated in earlier investments by the Initial Investment Entity in such portfolio company.

11. Partners will not be entitled to redeem their interest in the Initial Investment Entity. A Partner will be permitted to transfer its interest only with the express consent of the Managing Partner and only to an Eligible Investor. Upon a Partner's death, the Partner's estate will be substituted as a Partner.

12. The Managing Partner may require a Partner to withdraw from an Investment Entity if: (a) The Partner is no longer deemed to be able to bear to economic risk of investment in an Investment Entity; (b) an Investment Entity may suffer adverse tax consequences if a particular Partner were to remain; (c) the continued participation of the Partner would violate applicable law or regulations; or (d) the Managing Partner; in its sole discretion, deems such withdrawal to be in the best interest of the Investment Entity and any of its affiliated persons (as defined in section 2(a)(3)(C) of the Act).

If a Partner is required to withdraw, an Investment Entity may, in its sole discretion, require the Partner to sell its Interest in the Investment Entity. The purchase price for the sale of a withdrawing Partner's Interest would be equal to the Partner's capital account for the Investment as of the date the Partner is requested to withdraw determined as if the capital account were credited or charged with the income, realized and unrealized gains, expenses, and realized and unrealized losses attributable to the investment as determined by the Managing Partner.

13. An Investment Entity will not acquire any security issued by a registered investment company if, immediately after such acquisition, the Investment Entity would own more than 3% of the outstanding voting stock of the registered investment company.

14. Each Investment Entity may invest in investment opportunities offered to or by, or that come to the attention of, the Company, including opportunities in which the Company, its affiliates and/or its employees (including Partners of the Investment Entities) may invest for their own respective accounts. The Investment Entities may also sell securities to, or buy securities from, the Company, its affiliates, or its employees and may distribute securities in-kind to Partners. The Company may perform services for entities in which an Investment Entity invests and may be paid by such entities for such services and for related disbursements and charges.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining which provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests.

Section 2(a)(13) of the Act defines an employees' security company, in relevant part, as any investment company all of whose outstanding securities are beneficially owned: (a) By current or former employees, or persons on retainer, of one or more affiliated employers; (b) by immediate family members of such employees; or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though such company were registered under the Act.

Applicants request an order under sections 6(b) and 6(e) of the Act exempting them from all provisions of the Act, except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), and 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), and sections 36 through 53, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person (as defined in section 2(a)(3) of the Act) of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling or

purchasing any security or other property to or from the company.

Applicants request an exemption from section 17(a) to permit:

(a) The Company and Control Affiliates, acting as principal, to engage in any transaction directly or indirectly with any Investment Entity or any entity controlled by an Investment Entity;

(b) Any Investment Entity to invest in or engage in any transaction with any entity, acting a principal: (i) in which an Investment Entity, and entity controlled by an Investment Entity, the Company or Control Affiliate has invested or will invest; or (ii) with which an Investment Entity, any entity controlled by an Investment Entity, the Company or any Control Affiliate is or will become otherwise affiliated; and

(c) A partner or other investor of an investment vehicle for investors who are not affiliated with the Company, over which the Company or a Control Affiliate exercises investment discretion, and any affiliate of that partner or investor (collectively, ''Third Party Investors''), acting as principal, to engage in any transaction directly or indirectly with an Investment Entity or any entity controlled by an Investment Entity.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors. Applicants assert that, prior to investing, Eligible Employees will be provided with a copy of the organizational documents of an Investment Entity, which will set forth its specific investment objectives and strategies. Applicants believe that the Eligible Employees will be able to understand and evaluate the risks associated with participation in an Investment Entity. Applicants assert that the community of interest among the Partners and the Company will reduce the risk of abuse in such transactions. Applicants also acknowledge that any transaction subject to section 17(a) for which exemptive relief has not been requested would require specific approval from the SEC.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by order of the SEC.

Applicants request relief to permit an Investment Entity to participate in joint transactions involving:

(a) An investment in a security: (i) in which the Bain Funds, the Company, another Investment Entity or an affiliated person of any of the Bain Funds, the Company or an Investment Entity, or a transferee of one of these, is a participant or becomes a participant; or (ii) with respect to which the Company or any affiliated person thereof is entitled to receive fees or compensation of any kind, including, but not limited to, transaction fees, consulting fees, management fees or other economic benefits or interests; and

(b) Any investment vehicle sponsored, offered or managed by the Company, another Investment Entity or any affiliated person of the Company or an Investment Entity.

6. Applicants assert that the flexibility to structure co- and joint investments in the manner described in the application will not involve abuses of the type section 17(d) an rule 17d–1 were designed to prevent. Applicants state that, because attractive investment opportunities of the types considered by the Investment Entities often require that each participant make available funds in an amount that may be substantially greater than that available to an Investment Entity alone, there may be certain attractive opportunities of which an Investment Entity may be unable to take advantage except as a co-participant with other persons, including affiliated persons.

Applicants state also that, in light of the Company's purpose of establishing the Investment Entities to reward Eligible Investors and to attract highly-qualified personnel to the Company, the possibility is minimal that an affiliated-party investor will enter into a transaction with an Investment Entity with the intent of disadvantaging the Investment Entity. Applicants assert that strict compliance with section 17(d) could cause an Investment Entity to forgo investment opportunities simply because a Partner, the Company, or another affiliated person of the Investment Entity also had or was making such investment and would prevent the Investment Entity from achieving its primary investment purpose of investing alongside the Bain Funds.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 specifies the requirements for a registered management investment company to maintain custody of its investments.

Applicants request an exemption from the requirements of section 17(f) of the Act and rule 17f–2 under the Act to permit the following exceptions from the requirements of rule 17f–2:

(a) Compliance with paragraph (b) of the rule may be achieved through safekeeping in the locked files of the Company or of a partner of the Company;

(b) For purposes of paragraph (d) of the rule: (i) employees of the Company will be deemed employees of the Investment Entities, (ii) officers of the Managing Partner of an Investment Entity will be deemed to be officers of such Investment Entity, (iii) the Managing Partner of an Investment Entity will be deemed to be the board of directors of such Investment Entity; and

(c) In place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Company. Applicants submit that, because may of the Investment Entities' investments will be evidenced only by partnership agreements or similar documents, rather than by negotiable certificates which could be misappropriated, such instruments are most suitably kept in the Company's files where they can be referred to as necessary. Applicants also state that each Investment Entity comply with all other requirements of rule 17f–2.

8. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding.

Applicants state that it is likely that all members of the board of directors of the Managing Partners (''Board Members'') would be considered interested persons of the Investment Entities. Applicants request exemptive relief to permit a majority of the Board Members, regardless of whether they are interested persons, to take certain actions and make certain approvals concerning bonding required by rule 17g–1.

Applicants state that the Investment Entities could not comply with rule 17g–1 without the requested relief. Applicants also state that each Investment Entity will comply with all other requirements of rule 17g–1.

9. Section 17(j) and rule 17j–1(b) make it unlawful for certain persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered

investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1 under the Act, with the exception of the anti-fraud provisions of paragraph (b), because they would be unnecessary and burdensome in the case of the Investment Entities.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Investment Entities and would entail administrative and legal costs that outweigh any benefit to the Partners. Applicants request exemptive relief to the extent necessary to permit each Investment Entity to report annually to its Partners.

Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Managing Partner, Board Members and any other persons who may be deemed to be members of an advisory board of an Investment Entity from filing Forms 3, 4, and 5 under section 16(a) of the Securities Exchange Act of 1934 (the ''Exchange Act'') with respect to their ownership of Interests in the Investment Entities. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the ''Section 17 Transactions'') will be effected only if the Managing Partner determines that:

(A) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the affected Partners of the participating Investment Entity and do not involve overreaching of the Investment Entity or its Partners on the part of any person concerned; and

(b) The Section 17 Transaction is consistent with the interests of the Partners of the participating Investment Entity, the Investment Entity organizational documents, and the Investment Entity's reports to its Partners.

In addition, the Managing Partner will record and preserve a description of such section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of an Investment Entity and at least two years thereafter, and will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. In any case where purchases or sales are made from or to an entity affiliated with an Investment Entity by reason of a 5% or more investment in such entity by a director, officer, or employee of the Managing Partner, such individual will not participate in the Managing Partner's determination of whether or not to make such investment available to the Partners of an Investment Entity.

3. The Managing Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person of the Investment Entities, or any affiliated person of such a person.

4. The Managing Partner will not make available to the Partners of an Investment Entity any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Investment Entity and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment:

(a) Gives the Managing Partner of the participating Investment Entity holding such investment sufficient, but not less than one day's, notice of its intent to dispose of its investment; and

(b) Refrains from disposing of its investment unless the participating Investment Entity holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor.

The term ''Co-Investor'' means any person who is a: (a) An affiliated person of the Investment Entity who is under common control with the Investment Entity, or controlled by the Company; [1] (b) the Company and any entities controlled by the Company; (c) a current or former managing director of the Company; (d) an investment vehicle offered, sponsored, or managed by the Company or an affiliated person of the Company; or (e) a company in which the Managing Partner acts as a general partner or in a similar capacity, or has a similar capacity to control the sale or disposition of the company's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor:

(a) To its direct or indirect wholly-owned subsidiary, to any Company (a ''parent'') of which the Co-investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent;

(b) to immediate family members (spouses, parents, children, spouses of children, brothers, sisters and grandchildren) of the Co-investor or a trust established for any such family member;

(c) When the investment is comprised of securities that are listed, on a national securities exchange registered under section 6 of the Exchange Act; or

(d) When the investment is comprised of securities that are, national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

5. The Managing Partner of each Investment Entity will send to each Partner who had an interest in that Investment Entity at any time during the fiscal year then ended, Investment Entity financial statements. Such financial statements may be unaudited. In addition, within 90 days after the end of each fiscal year of each of the Investment Entities or as soon as practicable thereafter, the Managing Partner shall send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his federal and state income tax returns and a report of the investment activities of the Investment Entity during such year.

The Managing Partner will make a valuation or have a valuation made of all of the assets of the Investment Entities as of the end of each fiscal year in a manner consistent with the

[1] Such persons shall not include any parties who may be affiliated persons of the Investment Entity solely because they have co-invested in an investment vehicle or joint enterprise, where neither the Investment Entity nor the Company exercises control over such persons.

customary practice with respect to the valuation of assets of the kind held by the Investment Entities which may include, in the case of co-investments with a Bain Fund, valuations provided by such Bain Fund.

6. Each Investment Entity and its Managing Partner will maintain and preserve, for the life of each such Investment Entity and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Investment Entity to be provided to its Partners, and agree that all such records will be subject to examination by the SEC and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13066 Filed 5–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42787; File No. SR–Amex–00–14]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Index Fund Shares Pursuant to Rule 19b–4(e) Under the Securities Exchange Act of 1934

I. Introduction

On March 6, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish generic listing standards applicable to Portfolio Depository Receipts (''PDRs'') and Index Fund Shares. By establishing generic listing standards, the Amex may permit the listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b–4(e) under the Act[3] without submitting a proposed rule change pursuant to Section 19(b) under the Act.[4] The proposed rule change was published for comment in the **Federal Register** on March 28, 2000.[5] No comments were received on the proposal. The proposal was amended on April 27, 2000.[6] In this notice and order, the Commission is seeking comment from interested persons on Amendment No. 1, and is approving the proposed rule change, including accelerated approval of Amendment No. 1.

II. Description of the Proposal

The proposal adds commentaries to Amex Rules 1000 and 1000A to provide standards to permit listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[7] The proposal requires that PDRs and Index Fund Shares listed pursuant to Rule 19b–4(e) be subject to specific generic criteria as set forth in proposed Amex Rule 1000, Commentary .03 (for PDRs) and Amex Rule 1000A, Commentary .02 and .03 (for Index Fund Shares). All other provisions of Amex Rules 1000 *et seq.* and 1000A *et seq.* will continue to apply to such securities.

The proposed implements generic listing criteria that are intended to ensure that a significant portion of the weight of an index or portfolio is accounted for by stocks with substantial market capitalization and trading volume. Proposed Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A both provide that, upon the initial listing of a series of PDRs or Index Fund Shares under Rule 19b–4(e), component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.

The most heavily weighted component stock in an underlying index cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks, which is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code.[8] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

Proposed Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A provide that the underlying index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index must be calculated by a third party who is not a broker-dealer. The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Reporting Authority will disseminate for each series of PDRs and Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of PDRs or Index Fund Shares will be required to be outstanding as of the start of trading. The minimum trading increment for a series of PDRs

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

[4] 15 U.S.C. 78s(b).

[5] Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437.

[6] *See* letter from Michael J. Ryan, Chief of Staff, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, dated April 24, 2000 (''Amendment No. 1''). In Amendment No. 1, Amex proposed to add Commentary .03 to Amex Rule 1000A, creating a product description delivery requirement for series that have been granted relief by the SEC from the prospectus delivery requirements of Section 24(d) of the Investment Company Act of 1940 (''1940 Act''). Amex also clarified the timing for compliance with the eligibility criteria and verified that the Exchange will require issuers of a series of PDRs or Index Fund Shares listed under Rule 19b–4(e) to represent to the Exchange that the index or portfolio of securities underlying such series will comply with the applicable eligibility criteria as of the date of initial deposit of securities to the trust or fund in connection with the initial issuance of shares of such trust or fund.

[7] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b).

[8] Under the Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

will be 1/64 of $1.00, and for Index Fund Shares will be 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series.

The original listing fee for each series of PDRs and Indes Fund Shares will be $5,000. The annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the number of shares of a series of PDRs outstanding at the end of each calendar year. For funds with multiple series of Index Fund Shares, shares in all series outstanding at year end will be aggregated for purposes of the annual listing fee under Section 141 of the Amex *Company Guide*.

The Exchange will implement written surveillance procedures for PDRs and Index Fund Shares. In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each series of PDRs or Index Fund Shares listed under the rule within five business days of commencement of trading.[9]

The provisions of Amex Rules 1000 *et seq.* or 1000A *et seq.* will apply to all series of PDRs and Index Fund Shares listed under Rule 19b–4(e). In addition to the requirements of proposed Commentary .03 to Amex Rule 1000 and Commentary .02 and .03 to Amex Rule 1000A, PDRs and Index Fund Shares will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs and Index Fund Shares.

Amex Rule 154

Commentary .04(c) to Amex Rule 154 provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). PDRs and Index Fund Shares listed under Rule 19b–4(e) will be eligible for this treatment.[10]

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in PDRs and Index Fund Shares. These factors would include: (1) The extent to which trading is not occurring in stocks underlying the Index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in these Securities will also be halted in the event that market-wide ''circuit breaker'' parameters of Amex Rule 117 are triggered.

Amex Rule 190, Commentary .04

Commentary .04 to Amex Rule 190 will apply to PDRs and Index Fund Shares listed under 19b–4(e). This Commentary provides that the prohibition in Amex Rule 190(a) against a specialist or the specialist's member organization effecting any business transactions with a company in which stock the specialist is registered does not restrict a specialist registered in a series of PDRs or Index Fund Shares from purchasing and redeeming the applicable series from the issuer to facilitate the maintenance of a fair and orderly market.

Notice to Members

The Exchange will issue a Notice to Members for each series of PDRs or Index Fund Shares to be listed pursuant to Rule 19b–4(e). The Notice will describe the characteristics of the securities and inform members of any obligation to deliver a written product description or prospectus, applicable, to purchasers of PDRs or Index Fund Shares. In addition, the notice will inform members of their responsibilities under Amex Rule 411 (Duty to Know and Approve Customers) in connection with customer transactions in these securities.

The proposal also requires, in proposed Commentary .03 to Rule 1000A, members and member organizations to provide to purchasers of a series of Index Fund Shares a product description of the terms and characteristics of such securities in a form prepared by the open-end management investment company issuing such securities, not later than the time a conformation of the first transaction in such series is delivered to the purchaser. This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of Section 24(d) of the 1940 Act.[11] Additionally, members and member organizations are required to include the product description with any sales materials relating to a series of Index Fund Shares that is provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of Index Fund Shares must include a statement relating to the product description, in substantially the form set forth in the proposed Commentary .03. The proposal also provides that a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under proposed Commentary .03. Finally, the proposal provides that a member or member organization must provide a prospectus for a particular series of Index Fund Shares upon the customer's request.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[12] Specifically, the Commission finds that the proposal to provide generic standards to permit listing and trading of PDRs and Index Fund Shares pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[13]

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of PDRs, which represent interests in a unit investment trust

[9] 17 CFR 240.19b–4(e).

[10] *See* Securities Exchange Act Release No. 29063, (April 10, 1991), 56 FR 15652 (April 17, 1991) note 9, regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

[11] 15 U.S.C. 870a–24(d).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that is has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

(''Trust'') that operates on an open-end basis and holds a portfolio of securities.[14] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The Exchange currently trades PDRs based on: the Standard & Poor's 500 Index, known as Standard & Poor's Depositary Receipts® (''SPDRs''®); [15] the Standard & Poor's MidCap 400 Index™ (''MidCap SPDRs™''); [16] the Dow Jones Industrial Average℠ (''DIAMONDs℠''); [17] and, the Nasdaq-100® (Index Nasdaq-100 Shares™).[18]

The Commission first approved Amex's listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.* in 1996.[19] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently lists under Amex Rules 1000A *et seq.* seventeen series of World Equity Benchmark Shares℠ (''WEBS™'') based on Morgan Stanley Capital International foreign stock indices,[20] and nine series of Select Sector SPDRs® based on Select Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[21]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.[22] As noted above, the Commission has previously approved Amex Rules 1000 *et seq.* and 1000A *et seq.* to permit the listing and trading of PDRs and Index Fund Shares. In approving these securities for Exchange trading, the Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, except for SPDRs and the initial WEBS series, the Exchange separately filed proposed rule changes pursuant to Rule 19b–4 for each series of PDRs or Index Fund Shares currently trading on the Exchange. The Commission believes that adopting generic listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those series of PDRs and Index Fund Shares that satisfy those standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's and the Commission's regulatory burden, the Commission will maintain regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that PDRs and Index Fund Shares it previously approved for listing under the existing rules governing those securities would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities. The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and Index Fund Shares and, therefore, can be listed under Rule 19b–4(e) without prior Commission approval, should produce the same benefits to the Exchange and to investors.

The Commission finds that the Amex's proposal contains adequate rules and procedures to govern the listing and trading of PDRs and Index Fund Shares Rule 19b–4(e). All series of PDRs and Index Fund Shares listed under the generic standards will be subject to the full panoply of Amex rules and procedures that now govern the trading of existing PDRs and Index Fund Shares on the Amex. Accordingly, any new series of PDRs and Index Fund Shares listed and traded under Rule 19b–4(e) will be subject to Amex rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the Amex has developed specific listing criteria for series of PDRs or Index Fund Shares qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the Exchange has designated that a minimum of 100,000 shares of a series of PDRs or Index Fund Shares will be required to be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading. The Exchange has also established that upon initial listing: Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have minimum market value of at least $75 million; the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; the index or portfolio must include a minimum of 13 stocks; and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock

---

[14] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992). ''PDRs'' is a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

[15] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[16] Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). ''Standard & Poor's 500,'' ''Standard & Poor's MidCap 400 Index,'' ''Standard & Poor's Depositary Receipts®,'' ''SPDRs®,'' ''Standard & Poor's MidCap 400 Depositary Receipts'' and ''MidCap SPDRs'' are trademarks of The McGraw-Hill Companies, Inc.

[17] Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998). ''Dow Jones Industrial Average℠,'' ''DJIA℠,'' ''Dow Jones℠'' and ''DIAMONDS'' are each trademarks and service marks of Dow Jones & Company, Inc.

[18] Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999). The ''Nasdaq-100 Index®,'' ''Nasdaq-100®,'' ''Nasdaq®,'' and ''The Nasdaq Stock Market®'' are trademarks of Nasdaq and have been licensed for use for certain purposes by Investment Product Services, Inc. pursuant to a License Agreement with Nasdaq.

[19] Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[20] *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999). ''World Equity Benchmark Shares'' and ''WEBS'' are service marks of Morgan Stanley Group, Inc.

[21] *See* Securities Exchange Act Release No. 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998). ''Select Sector SPDR'' is a service mark of The McGraw-Hill Companies, Inc.

[22] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Market. Moreover, any series seeking to list under the generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.[23] The Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of PDRs and Index Fund Shares under rule 19b–4(e). These listing criteria also will make certain that new series of PDRs and Index Fund Shares do not contain features that are likely to impact adversely the U.S. securities markets. Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

In addition, as previously noted, all series of PDRs and Index Fund Shares listed under the generic standards will be subject to the existing continued listing criteria for these securities. This requirement allows the Amex to consider the suspension of trading and the delisting of a series if an event occurred that makes further dealings in such securities inadvisable. The Commission believes that this will give the Amex flexibility to delist PDRs or Index Fund Shares if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade PDRs in minimum fractional increments of 1/64 of $1.00 and Index Fund Shares in increments of 1/16, 1/32, or 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, which are all mechanisms that benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the PDRs or Index Fund Shares, thereby protecting customers and the public interest consistent with Section 6(b)(5) of the Act.[24]

The Exchange represents that the Reporting Authority will disseminate for each series of PDRs or Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable, as is the proposed method for calculating the annual fee.

The Amex has developed surveillance procedures for PDRs and Index Fund Shares listed under the generic standards that incorporate and rely upon existing Amex surveillance procedures governing PDRs, Index Fund Shares, and equities. The Exchange also will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and Index Fund Shares under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act. [25]

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs or Index Fund Shares is based. The proposal would require that in such circumstances, the broker dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and Index Fund Shares. PDRs listed under the generic standards will be subject to the existing Amex rules for PDRs which have a prospectus delivery requirement or, for series that have been granted relief from the prospectus delivery requirements of the 1940 Act, a product description delivery requirement. The proposal would implement a similar requirement for Index Fund Shares. The prospectus or product description will address the special terms and characteristics of a particular series, including a statement regarding their redeemability and method of creation, and a statement regarding the likelihood of whether such products will trade below, at, or above net asset value, based on the role of discount or premiums.[26] The requirement extends to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, a member or member organization must delivery a prospectus to a customer upon request.

The Commission also notes that upon the initial listing of any PDRs or Index Fund Shares under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs or Index Fund Shares.[27] The circular also will inform members of their responsibilities under Amex Rules 411 in connection with customer transactions in these securities. Accordingly, the Commission believes that the proposal governing the trading of PDRs and Index Fund Shares pursuant to the generic standards provides adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest consistent with Section 6(b)(5) of the Act.[28]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Specifically, the amendment adds Commentary .03 to Rule 1000A. Proposed Commentary .03 establishes a product description delivery requirement for series of Index Fund Shares that have been granted relief by the Commission from the prospectus delivery requirements of Section 24(d) of the 1940 Act. Proposed Commentary .03 is comparable to

[23] *See supra* Amendment No. 1, note 5.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5)

[26] As per conversation between Mike Cavalier, Associate General Counsel, Amex, and Heather Traeger, Attorney, Division, SEC, on May 15, 2000.

[27] *Id.*

[28] 15 U.S.C. 78f(b)(5).

Commentary .01 to Amex Rule 1000 which, under similar circumstances, requires delivery of a product description to purchasers of PDRs and was approved by the Commission in December 1992.[29] The Commission believes it is appropriate to approve this proposed provision at the same time as approving the generic standards because it establishes an important parallel requirement for Index Fund Shares that apply for listing under the proposed generic standards to that of PDRs. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether this amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–00–14 and should be submitted by June 14, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–00–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13004 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[29] *See supra,* note 15.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42792; File No. SR–NASD–00–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Mediation Fee Structure

May 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend the Code of Arbitration Procedure (''Code'') of the NASD to encourage the use of mediation, increase revenue by adjusting mediation fee schedules, and permit parties to agree to stay arbitrations in order to mediate their claims. The text of the proposed rule change follows. Proposed new language appears in italics; proposed deletions appear in brackets.

* * * * *

Rule 10205. Schedule of Fees for Industry and Clearing Controversies

(a)–(i) No change.

[(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $250. The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed by the parties and the mediator.]

* * * * *

Rule 10332. Schedule of Fees for Customer Disputes

(a)–(h) No change.

[(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of $150.]

[(j) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: $600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: $150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

* * * * *

Rule 10403. Arbitration Proceedings

(*a*) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. *When the parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code.*

(b) If mediation is conducted through NASD Regulation, no adjournment fees will be charged for staying the arbitration proceeding in order to mediate.[3]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Note: the reference to NASD Regulation will be changed to NASD Dispute Resolution, Inc., when such new subsidiary becomes operational.

Rule 10407. Mediation Fees

(a) Filing Fees: Cases Filed Directly in Mediation.

Each party to a matter submitted directly to a mediation administered by the Association shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

Amount in controversy	Customer and associated person fee	Member fee	Total fees
$.01–$25,000	$50	$150	$200
$25,000.01–$100,000	150	300	450
Over $100,000	300	500	800

(*b*) *Filing Fees: Cases Initially Filed in Arbitration.*

When a matter is initially filed an arbitration and subsequently submitted to a mediation administered by the Association, each party shall pay an administrative fee to the Association in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

Amount in controversy	Customer and associated person fee	Member fee	Total fees
$.01–$25,000	$0	$0	$0
$25,000.01–$100,000	100	150	250
Over $100,000	250	500	750

(*c*) *Mediator Fees and Expenses.*

The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association its proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is designed to encourage the use of mediation, especially in smaller cases, and to adjust mediation fee schedules. This proposed adjustment would be a first step toward making the NASD Regulation Mediation Program (''Mediation Program'') financially self-sustaining. The proposed rule change would also permit parties to stay arbitrations by agreement in order to mediate the claim, and would eliminate the adjournment fees when parties conduct their mediation through NASD Regulation.

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

Background. In 1995, NASD Regulation initiated a mediation program to provide an additional dispute resolution option for parties.[4] Mediation is an informal, non-binding, voluntary process in which an impartial person, trained in facilitation and negotiation techniques, helps the parties reach a mutually acceptable resolution. What distinguishes mediation from other forms of dispute resolution—principally, arbitration and litigation—is that the mediator does not impose a resolution on the parties, but rather works with the parties to create their own resolution. The settlement resulting from mediation, rather than arbitration or litigation, often saves the parties substantial time and expense.

The goal of the Mediation Program is to provide public customers, member firms, and associated persons with an alternative and effective means for resolving their disputes. Since its inception in 1995, over 3,500 cases have been submitted to the Mediation Program. By 1999, parties in twenty percent of all arbitration cases filed with NASD Regulation used mediation to help resolve their disputes.

The Mediation Program has been extremely successful, in terms of both settlement rates and customer satisfaction. Approximately eighty percent of the mediations settle within 60 to 90 days of the parties' formal agreement to mediate. Parties that used the Mediation program consistently express satisfaction with their experience, including those who have not ultimately reached full agreement. Sometimes parts of a dispute are resolved in mediation, leaving fewer issues to be resolved in arbitration. During the mediation, leaving fewer

[4] *See* Securities Exchange Act Release No. 35990 (July 19, 1995), 60 FR 38384 (July 26, 1995), (SR–NASD–95–25).

issues to be resolved in arbitration. During the mediation process, the parties and their representatives gain a better understanding of their case. Improved lines of communication often place the parties in a better position to settle the case at a later stage.

The features that have contributed to the success of the Mediation Program include:

• The mediators on the roster are highly qualified and experienced. Prior to admission to the roster, mediators are carefully screened by NASD Regulation staff and by members of the National Arbitration and Mediation Committee. Formal multi-day mediator training and experience as a mediator are requirements of service. NASD Regulation's 850 mediators represent a cross-section of people from diverse cultures, professions, and backgrounds. Many have extensive knowledge of securities law and industry practices, and many are also arbitrators with training and experience in resolving securities matters.

• The NASD Regulation staff in the Office of Dispute Resolution (''ODR'') performs a number of administrative services to facilitate the mediation. The staff works diligently to educate parties on the mediation process, to encourage them to mediate, to assist them in finding the best mediator for their case, and to ensure that the process runs smoothly. When one party expresses an interest in mediation, the ODR will contact the other party or parties, explain the mediation process, and answer any questions that arise. The ODR staff are trained to explain the benefits of mediation and to help bring all parties to the table. After conferring with the parties, the ODR will propose a list of several neutrals from its roster of experienced mediators who seem consistent with the parties' needs. The list is accompanied by a complete profile of each mediator. The parties may select their mediator from that list or ask for additional lists. The parties may also choose another mediator not on the list or from outside the Mediation Program roster. The staff works with the mediator and the parties to select a mutually convenient date and location for the mediation.

• Participation in the Mediation Program is voluntary. Parties choose whether, and at what point in the course of their case, to enter mediation.

• The Mediation Program is flexible and controlled by the engaged parties, who control the process, schedule, and outcome of the dispute. Parties may mediate before filing a formal claim or pleading in arbitration, or at any stage of the arbitration process. They may submit all or some of the issues in dispute to mediation, including selected substantive or procedural issues such as the extent, nature, and schedule of discovery. The first session can be scheduled in a matter of days or weeks. Meetings can be conducted in person in over 50 cities in the United States and abroad, by telephone, video conference, or by any other method to which the parties and the mediator agree.

• Mediating through NASD Regulation is cost-effective. Most mediations are successfully concluded in less than a single day, resulting in lower attorney fees for the parties. Parties that choose to mediate may also avoid the fees for an arbitration hearing if they can settle before proceeding to a hearing. Finally, parties in mediation benefit by avoiding the discovery costs typically associated with other forms of dispute resolution.

Operating the Mediation Program. The Mediation Program is currently subsidized. There are fifteen employees, located in five offices, in ODR's mediation department. For 1999, the total direct expenses for the Mediation Program were approximately $960,000, compared to $100,000 in direct revenues, resulting in an annual program deficit of $860,000. Because the Mediation Program has continued to grow steadily since its inception, NASD Regulation believes that this is an appropriate time to change the mediation fee structure.

The objective of the proposed rule change is to take preliminary steps toward making the Mediation Program financially self-sustaining while still keeping mediation as a cost-effective alternative to arbitration for parties with claims of any dollar value. NASD Regulation estimates that the proposed mediation fee package would generate income of $640,000 on an annual basis, assuming a level number of case filings. These funds would be used to help offset the operational costs of the Mediation Program and to ensure the continuation of this valuable service. In addition, the fee adjustments should add incentives for parties to mediate smaller cases.

In addition to filing this proposed rule change, NASD Regulation has recently instituted another revenue-increasing measure which did not require a change to the Code. Mediators on the roster of the Mediation Program individually set the fees they charge parties on each case. The rates are usually hourly and vary depending upon a given mediator's background, experience, and reputation. NASD Regulation then assesses a fee for each hour that the mediator bills the parties. This fee defrays a part of the costs the ODR incurs in providing services to mediators to administer the case.

Formerly, NASD Regulation charged mediators a fee of $25 for each hour the mediator billed the parties. This fee was significantly less than the charges of other dispute resolution providers, including those of the American Arbitration Association and JAMS, and will remain significantly less even with the enhanced fees. Effective April 3, 2000, NASD Regulation has eliminated the flat rate in favor of a sliding rate tied to the mediator's hourly compensation. This fee schedule, in addition to other changes, is designed to encourage mediators to charge lower rates for small claims and to agree to handle some cases *pro bono.* The new rates are as follows:

Mediator's hourly rate	NASD regulation fee
Pro Bono	None.
Up to $99.99	$25.
$100 to $199.99	$35.
$200 and over	$50.

Reduced Fees for Smaller Claims. NASD Regulation is committed to making mediation attractive to customers with smaller claims, that is, claims with less than $25,000 in dispute. Mediation is especially well-suited to resolving small disputes. However, with most mediators' hourly rates at $150 or more, mediation costs may exceed the parties' cost (exclusive of attorneys' fees) to arbitrate smaller claims. During 1997 and 1998, fewer than ten percent of all mediations involved claims of less than $25,000.

NASD Regulation has recently asked its mediators to help reduce the cost of mediation for small cases by agreeing to charge reduced rates to mediate cases involving claims of $25,000 or less. Specifically, it has suggested that mediators agree to charge $50 an hour for mediations where the amount in dispute is less than $25,000.

Mediators may set a limit on the number of reduced fee medications they will conduct during a year. After a mediator serves the designated number of times, ODR staff will not propose his or her name for mediation of small claims for the remainder of the year, unless the mediator is willing to serve on more cases at the reduced rate.

Summary of Proposed Rule Change. The rules setting mediation filing fees are currently contained in Rules 10205 and 10332 of the Code, which primarily address intra-industry and customer arbitration fees, respectively. NASD Regulation proposes to delete the provisions relating to mediation fees

from the arbitration sections of the Code, and to include them in the Rule 10400 Series that pertains to mediation. Specifically, NASD Regulation would create a new rule, Rule 10407, entitled ''Mediation Fees.''

The proposed rule change includes three components. First, new Rule 10407(a) would replace the current flat fee with a sliding-scale schedule of fees for cases filed directly in mediation. Second, new Rule 10407(b) would require parties to pay a mediation case filing fee when they choose to use the Mediation Program after having initiated arbitration. Third, Rule 10403(a) would be changed to make clear that the parties in arbitration can agree to stay the proceeding in order to mediate their claims, and new Rule 10403(b) would be added to provide an incentive to use the Mediation Program rather than an alternative forum when mediation takes place after an arbitration has been filed.

Mediation Case Filing Fees for Cases Filed Directly in Mediation: Rule 10407(a). About fifteen percent of the 850 mediation cases filed annually are filed directly in mediation and result in a mediation administrative fee charged to parties. NASD Regulation currently charges $150 per party for customer cases and $250 per party for intra-industry cases, irrespective of the amount in dispute. These fees are currently found in Rules 10205(j) and 10332(i).

NASD Regulation proposes to replace the flat fee with a sliding scale fee schedule in new Rule 10407(a). The schedule has one column of filing fees for customers and associated persons, and another column for member firms. The filing fees are lowest for the smallest claims but increase as the amount in controversy increases.[5]

Customers in mediation whose cases involve up to $25,000 in controversy would be charged only $50, rather than the present filing fee of $150. This is another measure that is intended to encourage the use of mediation for smaller claims. For claims between $25,000 and $100,000, customers would pay a filing fee of $150, the same as in the current model. However, when the claim exceeds $100,000, customers would pay a $300 filing fee. As noted, this same schedule also applies to claims made by associated persons.

Fees also are adjusted for members. Under the proposed rule, for cases up to $25,000 in controversy, members would continue to pay $150, which is the current flat rate for a customer dispute, but is lower than the current $250 flat rate for intra-industry disputes. For claims between $25,000 and $100,000, the charge for members would increase to $300, slightly higher than the current intra-industry rate under the flat fee schedule. For claims exceeding $100,000, the member fee would increase to $500. For all claims, regardless of the amount in dispute, customers and members would pay less under the proposal than the corresponding filing fees for arbitration.

Mediation Case Filing Fees for Cases Initially Filed in Arbitration: Rule 10407 (b). For cases first filed in arbitration that later go to mediation—which amount to about eighty-five percent of all the NASD Regulation mediations—NASD Regulation currently waives all mediation case filing fees for the parties, as stated in Rules 10205(j) and 10332(i). NASD Regulation proposes to eliminate the fee waiver for all cases over $25,000 and to charge mediation filing fees to parties choosing mediation after the arbitration case is already filed.

The ORD's mediation staff incurs expenses that are distinct from those incurred by its arbitration staff. For cases filed in arbitration first, the mediation staff expends a great deal of time educating the parties about the mediation alternative and attempting to encourage the parties to agree to mediate. NASD Regulation staff expends these efforts to encourage parties to mediate because mediation generally saves the parties costs and time. Settlement rates for mediation have been consistently high and parties have reported a high level of satisfaction with the process.

Arbitration fees currently cover arbitration case administrative tasks, but they do not cover the expenses of the mediation staff. Eliminating the fee waiver would recover some of the resources expended by the mediation staff in attempting to move cases from arbitration to mediation.

Consistent with its other efforts to increase the incentives for parties to mediate claims under $25,000, NASD Regulation would not impose any filing fee for converted small cases under the new Rule 10407(b). NASD Regulation believes it is beneficial to resolve these claims through mediation because of the cost savings to the parties involved.

NASD Regulation proposes to reduce the mediation filing fee for cases between $25,000 and $100,000 in order to induce members and investors to choose mediation. Members' filing fees for converted cases, found in Rule 10407(b), would be fifty percent less than for a case that is first filed in mediation, found in Rule 10407(a). Similarly, fees for customers would be reduced by $50.

In matters involving more than $100,000 in dispute, the proposed mediation filing fee for members is equal to the fee for a case that is first filed in mediation. Investors would get the benefit of a small reduction in fees for cases converted to mediation from the arbitration docket.

Mediator Fees and Expense: Rule 10407(c). The rule language regarding mediator fees and expenses contained in Rules 10205(j) and 10332(j) would be moved to Rule 10407(c). The rule language would remain unchanged, with one exception. NASD Regulation proposes to delete the final sentence in Rules 10205(j) and 10332(j), respectively, specifying mediator charges. NASD Regulation has found that mediators do not charge the parties fees for ''mediation sessions,'' as indicated in the rule. Rather, mediators charge for the actual hours of services they provide. Therefore, NASD Regulation proposed to delete the final sentence in Rules 10205(j) and 10332(j) when it moves the other relevant language to new Rule 10407(c).

Proposed Changes to Rule 10403. NASD Regulation proposes to amend Rule 10403 of the Code in two ways. First, by adding language to Rule 10403(a) to make it clear that parties who agree to submit a matter for mediation can also agree to stay the arbitration. The parties can do so notwithstanding Rule 10319, the rule that gives arbitrators discretion whether to stay an arbitration proceeding. This rule change would benefit the parties to a proceeding by saving them time and money and by relieving them of the problems of proceeding in two arenas at the same time. Moreover, this change is consistent with the approach of other alternative dispute resolution providers.

Second, NASD Regulation proposes to add a new provision, Rule 10403(b), that encourages the use of the NASD Regulation Mediation Program. Whenever the mediation is conducted through NASD Regulation, the parties would avoid payment of arbitration adjournment fees.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD

[5] NASD Regulation currently has a sliding scale schedule in place for arbitration fees. *See* NASD Rules 10205 and 10332.

Regulation believes that the proposed rule change is in the public interest because it will encourage the use of mediation, especially for small claims.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–11 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13068 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42791; File No. SR–Phlx–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Pilot Program To Assess a Monthly Credit of Up to $1,000 to Qualified Members

May 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. Today the Phlx filed an amendment to the proposed rule change (''Amendment No. 1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees, dues, and charges to allow for a monthly credit of up to $1,000 to be applied against all fees, dues, charges, and other amounts as may from time to time be owed to the Exchange that month, except fines, late fees, out-of-pocket expenses,[4] pass-through costs,[5] capital funding fees,[6] and any fees paid by equity trading permit holders in respect of any trading permits the Exchange may issue (''credit-eligible fees'')[7] by members who own the membership by which they are a member (''member-owners'') and certain other categories of members described below.[8] This credit is proposed as a six month pilot program.

In addition to member-owners, a monthly credit of up to $1,000 may be applied against credit-eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) All members who are a party to an A–B–C Agreement[9] with a member organization who owns that membership; or (2) all members who are lessees if: (a) the member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership;[10] (c) the member is associated with a member organization in which the owner has an interest of at least ten percent; (d) the member leases from an owner or a

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2000. Amendment No. 1 summarizes the two comment letters the Exchange received in response to this proposal and clarifies who is eligible for this credit. Due to the substantive nature of Amendment No. 1, this proposed rule change is deemed filed and immediately effective as of today.

[4] Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

[5] Pass-through costs include charges for member health insurance and parcel delivery services.

[6] Capital funding fees are fees assessed on owners to provide funding for technological improvements and other capital needs. The Commission approved the capital funding fee for a pilot period extending to July 6, 2000. *See* Securities Exchange Act Release No. 42405 (February 8, 2000) 65 FR 8226 (February 17, 2000) (SR–Phlx–99–51); and Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR–Phlx–00–29). The proposal to adopt the capital funding fee on a permanent basis is pending with the Commission. *See* Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49).

[7] The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges, and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge, and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

[8] This proposed rule change is intended to replace SR–Phlx–99–54, which was filed with the Commission on December 22, 1999 and withdrawn by letter dated May 13, 2000.

[9] Pursuant to Phlx Rule 940, the parties to an A–B–C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

[10] Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, brothers-in-laws, stepbrothers, sisters, sisters-in-law, stepsisters, children, stepchildren, and any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

related entity of the owner who provides order flow to the Exchange through the member consisting of at least 5,000 equity trades over the preceding twelve months or 50,000 option contracts over the preceding twelve months; or (e) the member leases from a clearing firm or a related entity of the clearing firm that provides clearing services to the leasing member. The aforementioned categories (including member-owners) are hereinafter to as ''qualified members.''

Specifically, the amount of credit-eligible fees owed to the Exchange shall be reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges, and other amounts equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less that $1,000.[11] Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which is associated. However, in no event shall the aggregate credit(s) exceed $1,000 per membership per month.

The Exchange initially intends that the request to receive the credit will be application driven, which applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. The credit is proposed for a six month pilot period.[12] The Exchange reserves the right to suspend the credit at any time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Introduction.* The purpose of the proposed rule change is to amend the Exchange's schedule of fees, dues and charges to allow for a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts, as defined above, owed to the Exchange by a qualified member of the Exchange.

As more fully explained below, the Exchange believes that the proposed credit should provide qualified members with additional liquidity and an incentive for seat owners to trade on the Exchange. In turn, the Exchange believes that this will introduce additional liquidity into the marketplace to the benefit of the investing public.

The Exchange believes that leasing of memberships by passive holders of equitable title to lessees who trade on the Exchange (*e.g.,* members) does not necessarily promote the long-term interests of the Exchange. Although the practice of leasing by financial investors to members is permitted by the rules of the Exchange, and may provide an important means by which members can access trading rights on the Exchange, the Exchange believes that lessors who are passive financial investors have a limited stake and interest in the liquidity, technology or operations of the Exchange.

Moreover, such lessors have limited practical ability to influence the affairs of the Exchange because practically all voting rights are vested in the ''members'' under Phlx's Certificate of Incorporation and By-Laws.[13]

The Exchange also believes that members who acquire membership and access trading on the Exchange by means of a lease may in many cases have a very limited stake in the well-being and survival of the Exchange. Although such members may have voting rights, they have no capital investment in their membership, and, because leases typically may be terminated on 30 days notice,[14] they do not necessarily have the incentive to act in the long-term best interests of the Exchange.

Specifically, by terminating a lease with 30 days notice, lessees who do not have ''other'' business interests or relationships with the Exchange beyond the mere existence of a lease (such as those relationships enumerated in part b. below) may, and often do, leave the Exchange to trade on another exchange, perhaps seeking to trade a certain ''hot'' option or other product. Thus, their potential commitment to the Exchange's long-term well-being and survival is undercut by their easy ability to pursue business endeavors that further their own well-being. Further, although member-lessees may be appointed to certain Exchange committees and sub-committees, their motivation to devote the time to such service may be less, as is their incentive to make decisions focused on the long-term. Both daily and longer terms, strategic decision-making could thus be affected.

This short-term commitment may also bear on the quality and quantity of liquidity provided on the Exchange. Building order flow commitments with order flow providers is a long-term endeavor, often requiring regular performance, evaluation, and most importantly, a relationship with the trading crowd providing liquidity. Thus, familiarity and consistency of crowd participation are an important marketing mechanism to order flow providers. Providing liquidity also involves a longer-term view of sacrificing profit today for continued order flow, as well as acknowledging that not every order is a profitable one, but continuous order flow, spawned by ample liquidity, should, over time, provide more opportunity for additional order flow.

Lessees that do not have other business interests or relationships such as those referred to in part b. below may also have a limited stake in the technology of the Exchange, including participation in and good use of technology, nor would they necessarily have an incentive to invest in the longer-term development of that technology. Such investment is not only financial, but also strategic. Such lessees may also have a limited stake in the operations of the Exchange, including the continued long-term refinement and upgrading of facilities, other equipment and the pricing of such operations. In sum, lessees, absent other factors tying them to the Exchange, may be less vested in the long-term success of the Exchange, in terms of a lesser incentive to create liquidity, invest in technology and be active in strategic and daily decision-making.

[11] For example, if a member has $1,500 in credit-eligible fees for the month, such member is entitled to the full $1,000 credit. However, if the member has $600 in credit-eligible fees for the month, such member is entitled to a $600 credit.

[12] This credit is part of the Exchange's long-term financing plan, which separately includes the $1,500 capital funding fee.

[13] A lessor entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. *See e.g.* Article Thirteenth of the Exchange's Certificate of Incorporation and Phlx By-Law Article XII, Section 12–6.

[14] *See* Phlx Rule 930(b).

In contrast, the Exchange is of the view that members who own their own memberships (and their functional equivalents, such as members who lease their members from close family members), and members who have certain other business or financial relationships which owners who are active on the Exchange (*e.g.,* members who are associated with member organizations and hold their memberships pursuant to ''A-B-C Agreements'') have a combination of financial incentives and voting rights (in some cases, indirectly via the owners with whom they are closely related or associated) to create liquidity on the Exchange, to invest in systems and compliance infrastructure, to be active in and informed about the decision-making processes of the Exchange, and otherwise to act in the Exchange's long-term best interests. By providing the credit described in this filing to these groups of members, the Exchange expects to create economic incentives for owners to trade on the Exchange by actively using their memberships (or selling them to persons who would do so) and for members to organize their affairs in ways that, the Exchange's view, properly align the interests of the members with the long-term interest of the Exchange. The Exchange also believes that the credit should help retain or create liquidity on the Exchange by freeing up funds that member-owners of their functional equivalents may otherwise be expending on credit-eligible fees.[15]

Although the credit described in this filing is available to some Exchange members and not others, it meets the criteria set forth in Sections 6(b)(4)[16] and 6(b)(5)[17] of the Act because it: (i) provides for ''* * * the equitable allocations of dues, fees and other charges among its members * * * and other persons using its facilities;'' and (ii) is not designed ''* * * to permit unfair discrimination between customers, issuers, brokers or dealers.'' Although the Exchange is not aware of precedents in which other exchanges have established fee or credit programs based upon ownership of seats or the connection between lessees and their lessors, as the Phlx proposes to adopt in this filing, the Commission has approved many exchange fee and credit arrangements that do not threat all members (or other persons covered by Sections 6(b)(4)[18] and (5))[19] equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms (*e.g.,* specialists versus floor brokers, or specialists versus market makers). As with the proposed credit, such measures are designed to promote and encourage certain behaviors and/or discourage others. The Exchange believes that this is an appropriate, nondiscriminatory business strategy.

As more fully articulated below, the Exchange believes that the credit is equitably distributed and not unfairly discriminatory, because it is based on legitimate, reasonable business interests of the Exchange, and is reasonably designed to further those interests. Moreover, it does not unfairly single out individuals or groups for personal or political reasons. To the contrary, and member may become eligible for the credit by changing the way in which such member finances his or her access to the Exchange by purchasing the membership or by changing the member's lease arrangement.

b. *More Detailed Rationale Specifically Applied to the Various Eligibility Criteria—i. Member-Owners.* In many areas of economic life, businesses and governments establish incentives to encourage behavior that is deemed desirable. In the case of exchanges, volume discounts and credits encourage members to direct transaction volume and trading activity to the exchange; other fee structures are designed to deter excessive usage of exchange resources or to cause scarce resources to be allocated more efficiently (*e.g.,* equipment service fees or fees relating to use of post/booth space on the floor).[20] The Exchange, as a matter of policy, believes that owner-membership or its functional equivalents as described above, should be encouraged because:

(A) Unlike passive, financial investors, owner-members risk their capital by their trading and other activities on the floor, thereby (in many cases) creating liquidity in our market and generating revenues for the Exchange, both directly though transaction-based revenues, and indirectly, by generating activity that results in tape revenues under the Consolidated Tape Association (''CTA'') and Options Price Reporting Authority (''OPRA'') plans.[21]

Seat ownership is one aspect of Exchange ''investment'' and the actual use of that membership by the qualified member is a different form. Member-owners on their functional equivalents, have *additional* operational and market risks. For example, a qualified member who is also a specialist or market maker may have additional risks related to fluctuations in the securities market and order-processing errors in addition to market risks associated with seat ownership. Similarly, a qualified member who is also a specialist may have risks (in addition to seat risk) associated with the specialists' obligation to promote a fair and orderly market and, particularly, maintain the limit order book. Furthermore, in addition to any fees assessed on owners, qualified members also contribute to the Exchange by paying transaction fees, such as equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges, and trading floor fees, such as trading post/both, controller space, shelf space, transmission, execution/communication charges, and floor facility fees.

(B) Unlike members who lease their seats under typical lease arrangements that may be cancelled on 30 days' notice, member-owners have a significant capital investment at risk; and

(C) Unlike owners that are not members, member-owners may have voting rights under the Exchange's by-

[15] The Exchange notes that, as part of its overall strategic financing plan, contemporaneously with the implementation of the credit described in this filing, it is separately instituting a $1,500 monthly capital funding fee upon all ''owners,'' regardless of their level of activity (if any) of the Exchange. *See supra* notes 6 and 12. Although the credit is not available to offset all or any portion of the capital funding fee, the credit will enable member-owners and others eligible for the credit to defray a portion of the transaction and other fees charged by the Exchange (and that, in general, result from member activity on the Exchange), thereby effectively reducing, for member-owners and other eligible members the cost of trading on the Exchange. Therefore, the credit may also have the indirect effect of blunting the incremental economic burden of the capital funding fee for owners who are active and, directly or indirectly, trading on (or otherwise providing certain economic benefits to) the Exchange. In addition, the credit frees up funds for trading activity on the Exchange that would otherwise be used for the payment of credit-eligible Exchange fees.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] *See e.g.* Securities Exchange Act Release Nos. 41748 (August 16, 1999), 64 FR 46218 (August 24, 1999) (SR–CBOE–99–34); 40496 (September 29, 1998), 63 FR 54175 (October 8, 1998) (SR–PCX–98–42); and 41108 (February 25, 1999), (64 FR 10516 (March 4, 1999) (SR–BSE–99–2).

[21] The CTA Plan and the OPRA Plan are approved by the Commission as national market system plans under Rule 11Aa3–2, 17 CFR 240.11Aa3–2, governing the dissemination of market information for certain equity securities and options, respectively; these plans govern both the fees that can be charged for such information as well as the distribution of revenues derived from those fees among participants in these plans, including the Exchange.

laws, and may participate on certain Exchange committees.[22]

Because of their dual interest in preserving and increasing the value of their memberships, and in the technological, operational, and regulatory infrastructure that affects the present and future conditions of transacting business on or at the Exchange, the Exchange believes that member-owners have powerful incentives to create liquidity on the Exchange, and to participate responsibly in the business life of the Exchange through the exercise of voting rights, and through service on the Board and certain Exchange committees. The concept (and the underlying policy) of making the credit available to member-owners is not unlike that of the federal government in providing tax incentives to homeowners that are not available to renters. The long-term capital stake of the homeowner in his or her property promotes various behaviors that have social utility in that it fosters community-oriented behavior, and increases the prospect that the homeowner will make further socially useful investments in the property and in the neighborhood.

The Exchange believes that similar principles are involved in the instant case. The ability to lease memberships has been available for many years. Over time, the equitable ownership of memberships by passive financial investors has become a very pervasive phenomenon at the Exchange, with 324 of the Exchange's 505 memberships being owned by such financial investors.[23] Of those memberships owned by passive financial investors, approximately 48 memberships are currently dormant (neither used for active trading nor leased).[24] Although the Exchange believes that leasing of memberships has a legitimate role in providing members a means of accessing trading rights on the Exchange, it also believes that the extent to which long-term capital investment is currently divorced from voting rights and trading interest in not healthy insofar as it relates to the long-term viability of the institution and its membership as a whole. The credit should create an incentive for owners to actively use their trading rights though membership and for members to reconsider the manner in which they finance their access to the Exchange. Furthermore, the Exchange believes that the credit will free up funds for those owners who are most likely to put their capital to work by trading and creating liquidity on the floor. The credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange and (because the credit may be applied against transactional fees) create further incentives to trade.

The Exchange notes that no member may claim that his or her lack of eligibility for the credit is unfair or discriminatory. Any member may obtain eligibility for the credit by changing his or her method of financing their access to the Exchange—*e.g.,* by purchasing their membership and (if they choose) borrowing from third-party lenders to effect that purchase. Any owner may obtain eligibility for the credit by, for instance, becoming an Exchange member (if they qualify for this and subject to the procedures set forth in the Exchange's rules).

ii. *Members/Member Organizations with A–B–C Agreements.* By definition, with respect to A–B–C Agreements, there is a very close nexus between a member and the member organization with whom the member is associated; in general, the member is an employee of the member organization. This close connection is reflected in the fact that the member organization provides all or part of the funds for the purchase of the membership of which the legal title is placed in the member, while the equitable title remains with the member organization.[25] In addition, the Exchange's By-Laws state, in part, that ''[a]n A–B–C Agreement is a contract between the member and member organization with which the member is associated in which a portion of the risk of fluctuations in the value of the membership shall rest with the member organization rather than with the member.'' [26]

Pursuant to the A-B-C Agreement, the member contributes to use of the membership to the member organization and subjects the membership to the claims of the creditors of the member organization. Moreover, the member organization pays the dues, fees, and other charges on behalf of the member. Thus, given this unique business relationship, owners who are member organizations have significant capital investment at risk and have a long-term interest in preserving and increasing the value of their membership, much like member-owners. For this reason, the Exchange is providing the credit to members who are a party to an A-B-C Agreement with a member organization who owns that membership. [27]

iii. *Lessees.* As stated previously, although leasing arrangements are permitted, lessees, other than the five types of qualifying members discussed in detail below (''non-qualifying lessees''), may have a limited stake in the long-term well-being of the Exchange. In fact, non-qualifying lessees may lack the incentive to engage in certain types of behavior that promote the long-term best interests of the Exchange, including providing liquidity and investing in technology enhancements. Specifically, non-qualifying lessees who do not put their own (or a member with whom they have a close nexus) capital at risk with respect to membership may provide liquidity or order flow with less of a long-term view and more of a focus on their current market risk only. This view may be at odds with behavior needed to address long-term Exchange needs. These non-qualifying lessees who do not have the types of additional connections to owners on the Exchange described below, may only have the incentive to participate in a self-focused way for their short-term benefit. If the credit were made available to all lessees, it would not serve its purpose as an inducement to promote owner-membership or other relationships to the Exchange that the Exchange believes are the most conductive to its continued health and success. Therefore, the Exchange is not making the credit available to all lessees. However, the Exchange is seeking to provide the credit to those qualified members whose relationship with the owners from whom they lease their seats is such that the Exchange believes they (either individually or indirectly when viewed in conjunction with their owners) have incentives properly aligned with the long-term interests of the Exchange.

(A) Members who are Lessees but who also are Owners of Different Memberships. Members who are lessees but who also are owners of a different membership should be accorded the same treatment as the traditional member-owners who were previously discussed. These members, who are also owners, have an interest in preserving and increasing the value of their membership as well as an interest in preserving and increasing the standard of technology and the operational and regulatory infrastructure that affects the present and future conditions of transacting business at the Exchange. As with traditional member-owners, the Exchange believes that the credit will

[22] *See supra* note 13.

[23] As of March 31, 2000, 324 memberships were subject to lease agreements. This number may change on a monthly basis.

[24] As of March 31, 2000, 48 seats were dormant (neither used for active trading nor leased).

[25] *See* Phlx Rules 940 and 941.

[27] *See supra* note 3.

free up funds for those members who are also owners thereby encouraging them to put their capital to work by trading and creating liquidity on the floor. As previously discussed, the credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange.

(B) Members who Lease from Close Family Members. At the Phlx, many members firms are family businesses, which choose to structure their operations with the owner being a relative (rather than that member) for tax or estate planning purposes. The Exchange believes that there is commonality of interest in property of close family members, thus affording the credit to members who lease from close family members. This concept is one that is widely accepted, especially in connection with rules relating to the securities industry and tax law. For example, Rule 16a–1(a)(2) under the Act [28] defines the term ''beneficial owner'' to mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities. Indirect pecuniary interest is then defined to include securities held by members of a person's immediate family sharing the same household.[29] In addition, Rule 701 under the Securities Act of 1933 [30] exempts from Section 5 of the Securities Act [31] certain offers and sales of securities under a written compensatory benefit plan established by the issuer for the participation of their employees and their family members who acquire such securities from such persons though gifts or domestic relations orders. Family members are defined in Rule 701(c)(3) [32] the same as ''immediate family'' is defined in Rule 16a–1(e).[33]

Tax laws also recognize the commonality of interest in property of close family members. For example, the Internal Revenue Code (''IRC'') recognizes the shared interests of family members by way of attributing the ownership of stock held by close family members to the taxpayer.[34] The IRC treats stock owned by these close family members as owned by the taxpayer in determining the tax liability of the taxpayer in various situations.[35]

A further example is the National Association of Securities Dealers, Inc. (''NASD'') Freeriding and Withholding Interpretation,[36] which restricts sales by NASD members to accounts in which so-called ''restricted persons'' have a beneficial interest. Such restrictions are also applicable, with some exceptions, to immediate family members of those restricted persons.

The Exchange believes that it should not penalize members who choose to lease memberships from close family members, as it believes that these persons are the functional equivalents of member-owners, and the same rationale applies to giving the credit to these members as to member-owners.

(C) Members who are Associated with a Member Organization in which the Owner has an Interest of at Least Ten Percent. Members who are lessees and are associated with a member organization in which the owner has at least a ten percent interest also should be eligible for the credit based on their closely aligned interests with the owner. The federal securities laws and rules of the securities industry have long recognized that a ten percent ownership interest is a significant capital investment. For example, Section 16 of the Act [37] requires any person who is the beneficial owner of more than ten percent of an equity security registered under Section 12 of the Act [38] to file a statement with the Commission indicating his ownership interest. Section 16 [39] also treats such beneficial owners as a company insiders and limits their ability to realize ''short swing'' profits. In enacting Section 16,[40] the Congress found that a ten percent owner was sufficiently involved in the affairs of the issuer to be treated as an insider.

Moreover, for purposes of NASD Conduct Rule 2720, which restricts the ability of an NASD member to participate in the distribution of a public offering of its own securities or the securities of the member's parent or affiliate, a company is presumed to control a member (and thus is an affiliate) if the company beneficially owns ten percent or more of the member firm. Finally, under the NASD's Freeriding and Withholding Interpretation,[41] an individual with a ten percent or more equity interest in an NASD member firm is deemed restricted by virtue of his ownership interest, and, thus, NASD member firms may not sell so-called ''hot issues'' to that individual.

In each of these examples, Congress or the NASD found that a ten percent owner is sufficiently involved in the affairs of the subject entity to be subject to the applicable restriction. A similar analysis is applicable with respect to owners of Phlx memberships who hold a ten percent or greater interest in the very member organization with which the lessee is associated. The interests of the owner, the member lessee and the member organization are sufficiently aligned to allow the lessee member the benefit of the credit.

(D) Members who Lease From Owners or Their Affiliates who Provide Order Flow to the Exchange Member. Similar to member-owners and other eligible members discussed above, members who lease from owners or their affiliates who provide order flow to the Exchange through the member have a direct contractual relationship with that owner. For example, a floor broker who executes orders entered by the owner from whom the member leases his or her seat has a fiduciary relationship with that owner. The member derives income, by way of commissions, from the order floor provider and the order flow provider, in turn, provides revenue to the Exchange mainly by way of transaction fees (and indirectly via tape revenues). Giving a credit to members in this situation should encourage the member to fully maximize the business relationship between the floor broker and order flow provider by encouraging the member to get more order flow, which in turn equates to an increase in fees paid by the floor broker to the Exchange. The Exchange believes that by extending the credit to this category of members who are closely associated with the owner, it is encouraging behavior that is beneficial to the long-term interests of the Exchange, *e.g.,* providing more order flow.

(E) Members who Lease From a Clearing Firm or a Related Entity of the Clearing Firm That Provides Clearing Services to the Leasing Member. Members who lease from a clearing firm or related entity of the clearing firm that provides clearing services to the leasing member should also be eligible to receive the credit. Members have a close connection to their clearing firms, or

[28] 17 CFR 240.16a–1.

[29] Immediate family is defined to mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-on-law, and shall include adoptive relationships. 17 CFR 240.16a–1(e).

[30] 17 CFR 230.71.

[31] 15 U.S.C. 77e.

[32] 17 CFR 230.701(c)(3).

[33] 17 CFR 240.16a–1.

[34] *See* 26 U.S.C. Section 318.

[35] *See* 26 U.S.C. Section 301 et. seq.

[36] NASD Conduct Rule IM–2110–1. The Freeriding and Withholding Interpretation is based on the premise that NASD members have an obligation to make a bona fide distribution of securities of a public offering that trade at a premium in the secondary market.

[37] 15 U.S.C. 78p.

[38] 15 U.S.C. 78L.

[39] 15 U.S.C. 78p.

[40] *Id.*

[41] *See supra* note 33.

related entity of the clearing firms, in that the clearing firms provide important and essential services by contractual agreement with such members; for instance, they guarantee members' trades. In addition, clearing firms lend money and extend credit; they also manage risk by way of tracking positions and other monitoring functions. Moreover, the clearing firm offers various ancillary services to the members, including stock executions services, office space and other business amenities. Therefore, given this close connection between the members and clearing firms or their affiliates, the Exchange believes that the credit is appropriate and should further their joint interest in the well-being of the Exchange.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, [42] in general, and with Section 6(b)(4) [43] in that it provides for the equitable allocation of reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule imposes no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Although written comments were not solicited, the Exchange issued a circular dated September 27, 1999 which announced certain actions taken at the September 1999 Phlx Board of Governors meeting. These actions included the approval of a monthly credit of up to $1,000 and invited telephone comments to be made to the Chairman. The Exchange has received two written comments; although these comments do not specifically address the proposed $1,000 credit, they do make reference to a ''rebate'' and a ''credit.'' Both letters raised the issue, among other things, of fairness in that some members would receive the credit and not others; this issue is addressed in detail in section A.1. above.[44]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [45] and Rule 19b–4(f)(2) [46] thereunder because it establishes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–44 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13069 Filed 5–23–00; 8:45 am]

BILLING CODE 8010–01–M

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78(b)(4)

[44] *See supra* note 3.

[45] 15 U.S.C. 78s(b)(3)(A)(ii).

[46] 17 CFR 240.19b–4(f)(2).

[47] 17 CFR 240.19b–4(f)(6)(iii).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 23, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Request for Information Concerning Portfolio Financing.

Form No: SBA Form-857.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00– 12984 Filed 5–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 23, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Financial Institution Confirmation Form.

Form No: SBA Form-860.

Frequency: On Occasion.

Description of Respondents: SBIC Investment Companies.

Annual Responses: 750.

Annual Burden: 750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–12985 Filed 5–23–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3311]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, June 22, 2000, from 9:30 a.m.–12:30 p.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: May 18, 2000.

Timothy C. Finton,

Executive Secretary, Advisory Committee on International Communications and Information Policy, U.S. Department of State.

[FR Doc. 00–13079 Filed 5–23–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33875]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to grant overhead trackage rights to The Kansas City Southern Railway Company (KCS) between a connection at Eastbridge Junction in Jefferson Parish, LA, at IC's milepost 906.73 in its McComb District, to a connection at Lampert Junction, in Orleans Parish, LA, at IC's milepost 921.3, in its McComb District, a distance of 2.8 miles.

The transaction was scheduled to be consummated on or shortly after May 12, 2000.[1]

The purpose of the trackage rights is to allow KCS a more direct access to the New Orleans Public Belt Railroad Company than it currently has, and to allow KCS to avoid operations through two heavily used yard facilities at IC's Mays Yard and KCS' West Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33875, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, 1300 I Street NW, Suite 500, Washington, DC 30005–3314.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 17, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–12965 Filed 5–23–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 250]

Appointment of Members of the General Counsel Panel of the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26

[1] Pursuant to 49 CFR 1180.4(g), a railroad must file a verified notice with the Board at least 7 days before the trackage rights are to be consummated. In its verified notice, IC indicated that it proposed to consummate the transaction on or about May 11, 2000. Because the verified notice was filed on May 5, 2000, consummation would not take place until May 12, 2000. IC's representative has been contacted and has confirmed that the consummation could not take place before May 12, 2000.

U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the General Counsel Panel of the Legal Division Performance Review Board;

Joan E. Donoghue, Deputy General Counsel, who shall serve as Chairperson;

Thomas M. McGivern, Counselor to the General Counsel;

Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);

Roberta K. McInerney, Assistant General Counsel (Banking and Finance);

Stephen J. McHale, Assistant General Counsel (Enforcement);

Russell L. Munk, Assistant General Counsel (International Affairs);

Rochelle F. Granat, Deputy Assistant General Counsel (General Law and Ethics);

Francine J. Kerner, Deputy Assistant General Counsel (Enforcement);

Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);

Eleni Constantine, Deputy Assistant General Counsel (Banking and Finance);

John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;

Alfonso Robles, Chief Counsel, United States Customs Service;

Walter Eccard, Chief Counsel, Bureau of Public Debt.

Dated: May 10, 2000.

Neal S. Wolin,

General Counsel.

[FR Doc. 00–13001 Filed 5–23–00; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register

Vol. 65, No. 101

Wednesday, May 24, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00-2356-000]

Entergy Services, Inc.; Notice of Filing

Correction

In notice document 00–12216 appearing on page 31155 in the issue of Tuesday, May 16, 2000, make the following correction:

In the first column, the docket line and the subject line should appear as set forth above.

[FR Doc. C0–12216 Filed 5–23–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

Correction

In notice document 00–10899 beginning on page 25503 in the issue of Tuesday, May 2, 2000, make the following correction:

On page 25504, in the second column, in the 31st line, ''*OMB Number:*1281–0101'' should read ''*OMB Number:*1218–0101''

[FR Doc. C0–10899 Filed 5–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42730; File No. SR–ISE–00–02]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Its Fee Schedule

April 28, 2000.

Correction

In notice document 00–11229 appearing on page 26256, in the issue of Friday, May 5, 2000, the docket line should appear as set forth above.

[FR Doc. C0–11229 Filed 5–23–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTAION

Federal Aviation Administration

14 CFR Part 71

Modification of Class E Airspace, Coldwater, MI

Correction

In rule document 00–9405 beginning on page 20350 in the issue of Monday, April 17, 2000, make the following correction:

§71.1 [Corrected]

On page 20351, in §71.1, in the second column, in the 12th line from the bottom, ''Mi'' should read ''MI''.

[FR Doc. C0–9405 Filed 5–23–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems Notice; Appointment of New System Manager

Correction

In notice document 00–11086 appearing on page 25979, in the issue of Thursday, May 4, 2000, make the following correction

On page 25979, in the third column, the heading ''**45FVA21**'' should read ''**45VA21**''.

[FR Doc. C0–11086 Filed 5–23–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday

May 24, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 447 and 457

45 CFR Parts 92 and 95

State Child Health; States Children's Health Insurance Program Allotments and Payments to States; Final Rule and Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 92 and 95

Health Care Financing Administration

42 CFR Parts 447 and 457

[HCFA–2114–F]

RIN 0938–AI65

State Child Health; State Children's Health Insurance Program Allotments and Payments to States

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule sets forth the methodologies and procedures to determine the allotments of Federal funds for each Federal fiscal year (FY) available to individual States, Commonwealths and Territories under title XXI of the Social Security Act. This rule also specifies the allotment, payment, and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under the State Children's Health Insurance Program (SCHIP) and related Medicaid program provisions.

Established by section 4901 of the Balanced Budget Act of 1997 (Public Law 105–33), amended by technical amendments (made by Public Law 105–100), and most recently amended by the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted November 29, 1999), the State Children's Health Insurance Program provides Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children. Aggregate Federal funding is limited to a fixed amount for each Federal fiscal year. This aggregate amount is divided into allotments for each State. State allotments are determined based on a statutory formula that divides the total available appropriation among all States with approved child health plans. Once determined, the amount of a State's allotment for a fiscal year is available for 3 years.

We are publishing this final rule in accordance with the provisions of sections 2104 and 2105 of the Act that relate to allotments and payments to States under title XXI.

DATES: *Effective Date:* These regulations are effective on June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019

SUPPLEMENTARY INFORMATION:

I. Background

We published on March 4, 1999 a proposed rule in the **Federal Register** (64 FR 10412), that set forth the methodologies and procedures to determine allotments of federal funds for each federal fiscal year that will be available to individual States, Commonwealths and Territories under title XXI of the Social Security Act (the Act). This rule also specified the allotment, payment, and grant award process that would be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under SCHIP and related Medicaid program provisions.

Section 4901 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by Public Law 105–100, added title XXI to the Act, to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Under title XXI, child health assistance is provided primarily for obtaining health benefits coverage through (1) obtaining coverage that meets requirements specified in the law under Section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

Section 2104(a) of the Act appropriates funds for each of ten fiscal years and directs the Secretary to calculate allotments of these appropriated funds for each State that will be available to match the State expenditures for that fiscal year. Section 2104(b) of the Act sets forth a specific methodology for calculating allotments to the fifty States, while section 2104(c) of the Act sets forth a methodology for calculating allotments to the Commonwealths and Territories. Section 2104(d) of the Act requires the reduction of the title XXI allotment to account for Medicaid expansions funded through the enhanced rate authorized by title XXI. Section 2104(e) of the Act provides for a 3-year period of availability for each State's annual allotment, and section 2104(f) authorizes redistribution of unspent allotments at the end of that period of availability.

Section 2105(a) and (b) of the Act requires the Secretary to make payments to each State with an approved State child health plan from its available allotment equal to a certain percentage (referred to as the enhanced Federal medical assistance percentage (enhanced FMAP)) of the State expenditures under the plan. These expenditures are primarily for child health assistance for targeted low-income children that meet the health benefits coverage requirements in section 2103 of the Act. Section 2105 of the Act authorizes the Secretary to establish a process for making payments to States for State expenditures under their title XXI programs. According to section 2105(c) of the Act, no more than 10 percent of a State's total expenditures may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

This final rule implements these title XXI SCHIP and related title XIX Medicaid program financial provisions, including the allotment process, the payment process, financial reporting requirements, and the grant award process.

II. Provisions of the Proposed Rule

Under our March 4, 1999 proposal, the new regulations for the State Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457 subchapter D. The existing regulations for the Medicaid program containing similar general financial and related provisions were used as a model for SCHIP regulations. We note that some sections and subparts would be reserved for regulations currently under development related to other statutory requirements of the State Children's Health Insurance Program. We intend to address these and other statutory requirements in subsequent **Federal Register** documents. In particular, a SCHIP proposed rule was published on November 8, 1999 in the **Federal Register** (64 FR 60882).

We proposed a new subpart B in Part 457 that would address requirements for financial administration of the SCHIP plan. We also proposed a new subpart F that would specify the methodologies and procedures to determine the Federal allotments, and the grant award process that will be used for payment to States.

Specifically, we proposed to add §§ 457.200 through 457.238 in Subpart B to set forth financial administration requirements to govern the documentation of claims for Federal payment, the standard accounting practices to be used in determining claims, and the process for resolving disputes about those claims. We proposed to add §§ 457.600 through 457.632, subpart F, that would implement the provisions of section 2104 of the Act, relating to the process for establishing the national total amounts available and the State specific

allotments for a fiscal year, and section 2105 of the Act, relating to the process for making payments to States from their allotments. We also proposed to add a new section on Medicaid presumptive eligibility at § 447.88 to subpart A.

Certain existing general Departmental regulations in part 45 of the Code of Federal Regulations (CFR) subparts 92 and 95 were conformed to the title XXI program. We revised the sections in these subparts.

III. Analysis of and Responses to Public Comments

We received one letter of comment on the March 4, 1999 proposed rule. A summary of the comments contained in that letter, and our responses follows.

A. Resubmission of Claims

Comment: The commenter noted that the proposed regulations seem to confirm that States may carry forward SCHIP claims in excess of their allotments for particular fiscal years and have those claims satisfied out of the following year's allotments, once those funds become available. The commenter suggested that claims exceeding a fiscal year's allotment should not have to be resubmitted.

Response: This commenter is concerned that a State should only have to report expenditures once, without having to resubmit them again in the case where the expenditures reported for a fiscal year are in excess of the SCHIP fiscal year allotments available in that fiscal year. This is already the case under the proposed rule as published in the **Federal Register** on March 4, 1999. Under § 457.616(c)(2), a State's reported payments are applied against the State's allotment ''based on the quarter in which the expenditures are claimed by the State.'' This provides the State with flexibility to decide the quarter in which a particular expenditure will be reported and claimed. As further provided in § 457.616(c)(6), if the State reports expenditures in one fiscal year and these expenditures are in excess of the allotment(s) available in that fiscal year, the amount of the excess expenditures are carried over for application against the allotment(s) available in the following fiscal year when they become available. We designed the expenditure reporting system to automatically track and carry over the amounts of excess expenditures. Therefore, States do not need to resubmit expenditures once they are submitted.

B. Regulations Related to Provider Related Donations and Health Care Related Taxes

Comment: The commenter suggested that HCFA should not issue SCHIP regulations in the area of provider-related donations and health care-related taxes. This commenter indicated that: ''In the overview regarding the section, Public Funds as the State Share of Financial Participation (§ 457.220), a statement is made that HCFA is considering whether there is need to issue additional regulations for provider-related donations and health care-related taxes for SCHIP. It does not seem appropriate or warranted under the title XXI legislation to have different regulations regarding provider-related donations and health care-related taxes for various programs. Additions to the current regulations for provider-related donations and health care-related taxes would bring unnecessary confusion and complication to SCHIP. We strongly urge HCFA against promulgating regulations in this area.''

Response: We agree that there is the potential for confusion if different regulations on the provider-related donations and health care-related taxes provisions applied in the SCHIP and the Medicaid program. The quoted language was intended to reflect recognition that, after we have more experience with the SCHIP program, we may need to clarify how the basic tax and donation principles set forth in the Medicaid statute would apply to a SCHIP program. At this time, we do not intend to incorporate special provisions on provider-related donations and health care-related taxes into the SCHIP regulations. As indicated in the preamble to the proposed rule published on March 4, 1999, in §§ 457.220 and 457.628, we will retain the references to the Medicaid regulatory provisions on this issue contained in 42 CFR subpart B §§ 433.51 through 433.74.

C. Carryover of Expenditures and the 10 Percent Limit

Comment: The commenter notes that the 10 percent limit on certain categories of costs—administrative costs and costs of outreach, health services initiatives, and payment for services other than coverage—is applied on an annual fiscal year basis. The commenter further noted that SCHIP guidance documents prepared by HCFA would permit States to withhold submission of claims for expenditures, which would have the effect of allowing a carryover period for the 10 percent limit. The commenter requested that the final regulation expressly authorize such a carryover period for the 10 percent limit.

Response: We are clarifying the regulation in this regard. While we agree with the commenter that we would permit States the flexibility to time the submission of claimed expenditures, we would not permit the carryover of claims for administrative costs once claimed in a particular fiscal year (even when no Federal payment is made based on those expenditures paid because they exceed the 10 percent limit for that fiscal year). HCFA believes its position faithfully adheres to the intent of the statute while permitting some administrative flexibility in the submission of claims and administrative simplicity in calculating whether the limit has been exceeded.

As indicated in proposed § 457.616(c)(2), for purposes of applying expenditures against the available fiscal year allotments, we intended to permit States flexibility in deciding the quarter in which they will submit the expenditures. We would make the same flexibility available to States with respect to the 10 percent limit referred to in § 457.618. As specified below, in this final rule, we are amending §457.618 to make clear that both the expenditures used in calculating the 10 percent limit, and the expenditures applied against the 10 percent limit, are based on the quarter in which the expenditures are claimed by a State. We are also amending § 457.616 to make clear that the expenditures that are within a particular fiscal year's 10 percent limit may be applied against a subsequent fiscal year's available allotment or allotments for purposes of Federal reimbursement. This could occur when the available allotment or allotments for a fiscal year was exhausted. In that case, even though the amounts of the expenditures were within the 10 percent limit, and therefore, otherwise reimbursable, no Federal payment would be available for the expenditures because there would be no available allotment for that fiscal year. Therefore, we are clarifying that expenditures in excess of the 10 percent limit for the fiscal year during which they are claimed may not be applied against an allotment available only in a subsequent fiscal year.

Consistent with this position that expenditures subject to the limits are counted in the fiscal year claimed, we are also clarifying that, for purposes of calculating the 10 percent limit, total program expenditures are counted in the fiscal year claimed as well. These expenditures cannot be used in more than one Federal fiscal year. For

example, the amount of the expenditures referenced in section 2105(a)(1) of the Act as claimed and reported by a State on the 4 quarterly expenditure reports for FY 1998, would be used in calculating a State's 10 percent limit for FY 1998. These expenditures may not be used again for calculating a 10 percent limit for another fiscal year, such as for FY 1999. Similarly, the amount of the expenditures referenced in section 2105(a)(2) of the Act, as reported on the 4 quarterly expenditure reports for FY 1998 would be applied against the 10 percent limit for FY 1998; these expenditures may not be applied against a 10 percent limit for another fiscal year, such as for FY 1999. Therefore, based on when they claim and report expenditures, States have the flexibility to determine the fiscal year 10 percent limit regarding which such expenditures will be applied.

IV. Provisions of the Final Regulations

After consideration of the comments reviewed and further analysis of specific issues, we are adopting the March 4, 1999 proposed rule as final with minor editorial clarification and revisions discussed and identified in Section III of this preamble.

In addition, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted on November 29, 1999) contained certain provisions which are being implemented in this final regulation. As detailed below, these provisions are explicit, clear and straightforward in the statute, and we believe, self-implementing. Therefore, we are implementing the new provisions of BBRA of 1999 discussed below in this final regulation as final without need for public comment.

A. Inapplicability of Enhanced Match Under the SCHIP to Medicaid DSH Payments

Section 605(a) of the BBRA of 1999 amends section 1905(b) of the Act to preclude the availability of the enhanced Federal medical assistance percentage (enhanced FMAP) for disproportionate share hospital (DSH) payments made by States under section 1923 of the Act. Under section 606(b) of Public Law 106–113, this amendment ''takes effect on October 1, 1999, and applies to expenditures made on or after such date.'' In general, the Federal matching rate available for expenditures described in sections 1905(u)(2) and (3) of the Act, relating to the Medicaid SCHIP expansion groups, is the enhanced FMAP specified in section 2105(b) of the Act and by reference in section 1905(b) of the Act. However, section 605(a) of the BBRA of 1999 amended section 1905(b) of the Act to specifically preclude the availability of the enhanced FMAP for DSH payments made under section 1923 of the Act.

Sections 457.616(a)(1) and (2) of this final regulation refer to the reduction of a State's Title XXI allotment by the amount of Medicaid payments made to the State on the basis of the enhanced FMAP. As indicated above, enhanced FMAP is no longer available for DSH expenditures under section 1923 of the Act, regardless of whether the expenditures meet other conditions for enhanced FMAP. Therefore, there is no need to modify these SCHIP regulations, as contained in this **Federal Register** publication. However, we also note that the proposed SCHIP regulations published on November 8, 1999 in the **Federal Register** at sections 42 CFR 433.10 and 433.11 would have provided for the availability of the enhanced FMAP under the Medicaid program. These proposed regulations will need to be revised to reflect the provisions of section 605(a) of the BBRA of 1999, which precludes enhanced match for DSH expenditures under section 1923 of the Act.

B. Stabilizing the SCHIP Allotment Formula

1. Acceleration of the Phase-in of Low-Income Children.

Section 701(a)(1) of the BBRA of 1999 amended section 2104(b) of the Act to accelerate the phase-in of the blend of the numbers of uninsured low-income children and low-income children specified in the statute, which are used in determining the Number of Children factor. Prior to this legislative change, the Number of Children for FYs 1998 through 2000 would have been based on the total number of low-income uninsured children in the State. As a result of the legislative change, the total number of uninsured low-income children in the State is only used for determining the Number of Children factor for FYs 1998 and 1999. Under section 2104(b) of the Act, as amended by section 701(a)(1) of the BBRA of 1999, for FY 2000 the Number of Children is now calculated as the sum of 75 percent of the low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. Furthermore, for FY 2001 and succeeding fiscal years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. Section 457.608 of the final regulation incorporates this change.

2. Floors and Ceiling in State Allotments.

Section 701(a)(2) of the BBRA of 1999 significantly amended and revised section 2104(b)(4) of the Act to impose floors and ceilings in the determination of the SCHIP allotments for a fiscal year, for the purpose of providing increased stability in SCHIP funding from fiscal year to fiscal year and cumulatively over a number of fiscal years, as compared to FY 1999. For purposes of this provision, the floors and ceilings are only applicable to a ''Subsection (b) State,'' which as defined in section 2104(b)(4)(D)(ii) of the Act, ''means one of the 50 States or the District of Columbia.'' More specifically, the floors and ceilings apply only to the determination of the ''Allotments to 50 States and District of Columbia'' under section 2104(b) of the Act, as distinguished from the determination of the ''Allotments to Territories'' under section 2104(c) of the Act. The floors and ceilings imposed by section 701(a)(2) of the BBRA of 1999 do not apply with respect to the determinations of allotments for the Commonwealths or Territories as prescribed in section 2104(c) of the Act.

Under section 2104(b)(4)(D) of the Act, as amended by section 701(a)(2) of the BBRA of 1999, for a fiscal year each State is allotted a ''proportion'' of the total amount available for funding under title XXI to all States for the fiscal year. The term ''proportion,'' as defined in section 2104(b)(4)(D)(i) of the Act, refers to the amount of the allotment for a State for a fiscal year divided by the total amount available nationally for all States for the fiscal year. The proportion for each State is the State's percentage share of the total amount available nationally for that fiscal year to all States. Therefore, in order for the entire total amount available nationally to be allotted to the States, the sum of the proportions for all States must exactly equal one; in other words, the sum of each State's percentage share, must exactly equal 100 percent. The determination of the proportion for each State is in accordance with the provisions of section 2104(b) of the Act, and as amended by section 701(a)(2) of the BBRA of 1999, the proportions will reflect the application of floors, ceilings, and a reconciliation process, if appropriate.

In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year. In

accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a ''product'' for each State. The determination of the Number of Children and the State Cost Factor are described in other sections. The resulting products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding that State's preadjusted proportion, referring to the State's proportion before the imposition of the floors and ceilings and related reconciliation provisions.

Under the second step, the preadjusted proportions are subject to the application of the floors and ceilings provisions. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the State's FY 1999 proportion.

Each State's proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must not be higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program.

As determined under the first step, which is applied prior to the application of any floors or ceilings, the sum of these preadjusted proportions for all the States will be exactly equal to one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the proportion floors, while other States' proportions may need to be lowered to the maximum proportion ceiling. After application of the fixed floors and ceilings, the sum of the (adjusted) proportions for all States may not exactly equal one. In that case, section 2104(b)(4)(B) of the Act requires a further ''reconciliation'' of the proportions, under which the proportions will be adjusted to make the sum of the proportions exactly equal to one. This reconciliation process is determined in accordance to whether the sum of the proportions after application of the fixed floors and ceiling, but before reconciliation, is greater than or less than one.

The sum of the proportions would be greater than one if the application of the fixed floors and ceilings resulted in the raising of the proportions of States (due to the floors) to a greater degree than the lowering of the proportions of other States (due to the ceilings). The sum of the proportions would be lower than one, if the application of the fixed floors and ceilings resulted in the lowering of the proportions of States (due to the ceilings) to a greater degree than the raising of the proportions of other States (due to the floors). It is at least theoretically possible, though highly unlikely, that the sum of the States' proportions would still exactly equal one after the application of the fixed floors and ceilings. In that case, no further reconciliation would be necessary, and the proportions would be the same as the preadjusted proportions.

Finally, section 2104(b)(4)(C) of the Act, requires that the floors and ceilings provisions under section 2104(b)(4) of the Act, must not apply or take into account the amounts of allotments that might be redistributed in accordance with section 2104(f) of the Act. Therefore, the total amount available to States nationally in a fiscal year, would not include any redistributed amounts in that year.

Under the reconciliation process, if the application of the fixed floors and ceilings results in the sum of the States' proportions being greater than one, section 2104(b)(4)(B)(i) of the Act requires the Secretary to establish a maximum percentage increase in States' proportions, such that when applied to the State proportions the sum of the proportions would exactly equal one. If the application of the fixed floors and ceilings results in the sum of the States' proportions being less than one, section 2104(b)(4)(B)(ii) of the Act requires the Secretary to increase States' proportions (as computed before the application of the fixed floors) in a pro rata manner (but not to exceed the 145 percent ceiling), such that when applied to the State proportions the sum of the proportions would exactly equal one.

These final regulations are revised to conform to the provisions of section 701(a)(2) of BBRA of 1999 discussed above, specifically:

Section 457.608(e)(3)(A) specifies the provisions in section 2104(b)(4)(A) of the Act related to the fixed floors and ceilings.

Section 457.608(e)(3)(B) specifies the provisions in section 2104(b)(4)(B) of the Act related to the reconciliation process.

Section 457.608(b) specifies the provision in section 2104(b)(4)(D) of the Act related to the definition of proportion.

Section 457.608(a)(3) specifies the provisions in section 2104(b)(4)(C) of the Act related to the redistribution process.

3. Availability of Data From the Bureau of the Census

Under section 2104(b)(2)(B) of the Act, as amended by section 701(a)(3) of the BBRA of 1999, the Number of Children for each State (provided in thousands) for a fiscal year is determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the Current Population Survey (CPS) officially available from the Bureau of the Census before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000 begins on October 1, 1999; that is, FY 2000 begins during calendar year 1999. Therefore, the Number of Children for each State for FY 2000 would be based on the most recent 3 years of the Bureau of the Census CPS data officially available before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins), that is, it would be based on the Bureau of the Census CPS data officially available through December 31, 1998. Section 457.608(e)(2) of the final regulation in the discussion for ''Number of Children'' incorporates this change.

4. Availability of Data From the Bureau of Labor Statistics

Under section 2104(b)(3)(B) of the Act, as amended by section 701(a)(4) of the BBRA of 1999, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State as reported, determined, available as final, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor for each of the most recent 3 years available before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000

begins on October 1, 1999, that is, FY 2000 begins during calendar year 1999. Therefore, the State cost factor for FY 2000 would be based on the most recent 3 years of BLS data available as final before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins); that is, it would be based on the BLS data available as final through December 31, 1998. Section 457.608(e)(2) of the final regulation in the discussion for ''State Cost Factor for a State'' incorporates this change.

C. Increased Allotments for Territories Under SCHIP

Section 702 of the BBRA of 1999, provides for additional funds available for allotment only to the Commonwealths and Territories. Under this new provision, an additional $34.2 million is made available for allotment to the Commonwealths and Territories in fiscal years 2000 and 2001; $25.2 million in FYs 2002 through 2004; $32.4 million for fiscal years 2005 and 2006; and $40 million for FY 2007. These amounts would be added to the amounts previously available for allotment to the Commonwealths and Territories, that is, the amount determined as .25 percent of the appropriation amount for the fiscal year specified at section 2104(a) of the Act. Section 457.608(d) of these final regulations contains the amounts available for allotment to the Commonwealths and Territories.

D. References to SCHIP and State Children's Health Insurance Program

Section 704 of the BBRA of 1999 requires the Secretary of the U.S. Department of Health and Human Services or any other Federal officer or employee, with respect to any reference to the program under title XXI of the Act in any publication or official communication, to use the term ''SCHIP'' instead of the term ''CHIP,'' and the term ''State children's health insurance program'' instead of ''children's health insurance program.'' This final regulation incorporates the application of these terms, as required by section 704 of the BBRA of 1999.

V. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. These regulations will implement narrowly defined statutory language on the allocation of funds for SCHIP and will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of Section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State Children's Health Insurance Program established under title XXI of the Act. This rule also establishes in regulations the payment and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive FFP for expenditures under the SCHIP and related Medicaid program provisions.

Budget authority for title XXI is statutorily specified in Section 2104(a) of the BBA with additional money authorized in Public Law 105–100. The total national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of SCHIP, is established as follows:

TOTAL AMOUNT OF ALLOTMENTS

Year	Amount
1998	$4,235,000,000
1999	4,247,000,000
2000	4,249,200,000
2001	4,249,200,000
2002	3,115,200,000
2003	3,175,200,000
2004	3,175,200,000
2005	4,082,400,000
2006	4,082,400,000
2007	5,040,000,000

The spending levels shown in the table above are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. In addition, under Public Law 105–277, an additional $32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999, and is included in the amount listed for FY 1999 in the chart above. Section 702 of the BBRA of 1999 also provided for additional funds available for allotment only to the Commonwealths and Territories. Under this new provision, an additional $34.2 million is made available for allotment to the Commonwealths and Territories in fiscal years 2000 and 2001; $25.2 million in fiscal years 2002 through 2004; $32.4 million for fiscal years 2005 and 2006; and $40 million for fiscal year 2007.

Furthermore, under sections 4921 and 4922 of Public Law 105–33, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 each for a special diabetes research program for Type I diabetes and special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Administrative resources needed in HCFA's Program Management account to carry out the new responsibilities of the State Children's Health Insurance Program have been estimated at $10.1 million.

For these reasons, we are not preparing an analysis for either the RFA or Section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Federalism

Under Executive Order 13132, this regulation will not significantly affect the States beyond what is required by title XXI of the Act. It follows the intent and letter of the law and does not preempt State authority beyond what title XXI requires. This regulation describes only the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds and proposes the allotment, payment, and grant award processes applicable to individual States, Commonwealths, and Territories for SCHIP, established under title XXI of the Act.

We have included various provisions throughout this regulation that demonstrate our intention to cooperate with the States. For example, in the implementation of title XXI and the development of these regulations, we established a process under which, during the period when States were developing their programs, SCHIP allotments were determined and ''reserved'' for each State for the fiscal year, regardless of whether the State had submitted and had an approved State child health plan. Accordingly, for FYs 1998 and 1999, we published ''reserved'' allotments at the beginning of each fiscal year; the ''final'' allotments to be published at a later date. By publishing the ''reserved'' allotments during the early stages of title XXI implementation, our intention was to provide States with the flexibility and time needed to develop their programs and to submit their State child health plans. Every State, Commonwealth and Territory qualified for an allotment by having an approved State child health plan prior to the start of FY 2000. As a result, so long as all States, Commonwealths, and Territories continue to qualify for allotments, the allotments for FY 2000 and future years can be published as ''final'' rather than ''reserved.''

In addition, training sessions led by HCFA were held throughout the country in 1998, with almost all States in attendance, on the financial and reporting aspects of title XXI. These presentations were designed to initiate a dialogue with the States and to obtain their input. States also provided substantial input following distribution of a December 8, 1998, all State letter intended to provide guidance to States on reporting for purposes of program monitoring and evaluation, including the submission of quarterly expenditure and financial/statistical reports and the Federal fiscal year 1998 annual reports. States were among those who provided comments on the March 4, 1999, proposed rule, as well as the **Federal Register** notices of September 12, 1997 (62 FR 48098), and February 8, 1999 (64 FR 6102), both of which listed reserved allotments for the States, District of Columbia, and Commonwealth and Territories.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 457.226 Fiscal Policies and Accountability

A State plan must provide that the SCHIP agency and, where applicable, local agencies administering the plan will; (a) Maintain supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements, (b) retain records for 3 years from date of submission of a final expenditure report, (c) maintain records beyond the 3-year period if audit findings have not been resolved, and (d) retain certain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.234 State Plan Requirements

A State plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's SCHIP program.

The burden associated with this requirement is captured pursuant to the completion of HCFA collection, HCFA–R–211, approved under OMB number 0938–0707.

Section 457.238 Documentation of Payment Rates

The SCHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

We have determined that these record keeping requirements meet the criteria forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

Section 457.606 Conditions for State Allotments and Federal Payments for a Fiscal Year

In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with Section 2106 of the Act and approved by the end of the fiscal year.

The burden associated with the submission of the State Child Health Plan is currently captured in accordance with the completion of the HCFA–R–211, approved under OMB number 0938–0707.

Section 457.614 General Payment Process

In order to receive FFP for a State's claims for payment for the State's expenditures, a State must submit budget estimates of quarterly funding requirements for Medicaid and the State Children's Health Insurance Programs and submit an expenditure report.

The burden associated with these reporting requirements are currently captured in accordance with the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. The OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067, respectively.

Section 457.630 Grants procedures

A State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. In addition a State must submit a budget request for the fourth quarter of the fiscal year.

The State Children's Health Insurance Program Agency must submit Form HCFA–21B (State Children's Health Insurance Program Budget Report for State Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly State Children's Health Insurance

Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

The burden associated with these reporting requirements are currently captured in accordance with the completion of HCFA collections, HCFA–21, HCFA–37, and HCFA–64. The OMB control numbers for these collections are 0938–0731, 0938–0101, and 0938–0067, respectively.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 457.226, 457.234, 457.238, 457.606, 457.614, and 457.630.

If you comment on any of these information collection and recordkeeping requirements, please mail 3 copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room N2–14–16, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke, HCFA–2114–F, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. ATTN: Allison Herron Eydt, HCFA Desk Officer

List of Subjects

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, State Children's Health Insurance Program, Reporting and record keeping requirements.

42 CFR Part 92

Accounting, Grant Programs, Indians, Intergovernmental Relations, Reporting & record keeping requirements.

42 CFR Part 95

Claims, Computer technology, Grant programs—Health, Grant programs—Social programs, Reporting and recordkeeping requirements.

42 CFR chapter IV, and 45 CFR subtitle A are amended as set forth below:

A. 45 CFR part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.88 is added to read as follows:

Subpart A—Payments: General Provisions

§ 447.88 Options for claiming FFP payment for section 1920A presumptive eligibility medical assistance payments.

(a) The FMAP rate for medical assistance payments made available to a child during a presumptive eligibility period under section 1920A of the Act is the regular FMAP under title XIX, based on the category of medical assistance; that is, the enhanced FMAP is not available for section 1920A presumptive eligibility expenditures.

(b) States have the following 3 options for identifying Medicaid section 1920A presumptive eligibility expenditures and the application of payments for those expenditures:

(1) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended with no further adjustment based on the results of a subsequent actual eligibility determination (if any).

(2) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended but may adjust reported expenditures based on results of the actual eligibility determination (if any) to reflect the actual eligibility status of the individual, if other than presumptively eligible.

(3) A State may elect to delay submission of claims for payments of section 1920A presumptive eligibility expenditures until after the actual eligibility determination (if any) is made and, at that time identify such expenditures based on the actual eligibility status of individuals if other than presumptively eligible. At that time, the State would, as appropriate, recategorize the medical assistance expenditures made during the section 1920A presumptive eligibility period based on the results of the actual eligibility determination, and claim them appropriately.

B. A new subchapter D—CHILDREN'S HEALTH INSURANCE PROGRAMS is added, to read as follows:

SUBCHAPTER D—STATE CHILDREN'S HEALTH INSURANCE PROGRAMS (SCHIPs)

PART 457—ALLOTMENTS AND GRANTS TO STATES

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.

Subparts C through E—[Reserved]

Subpart F—Payment to States

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—[Reserved]

Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

§ 457.200 Program reviews.

(a) *Review of State and local administration of the SCHIP plan.* In order to determine whether the State is complying with the Federal requirements and the provisions of its plan, HCFA reviews State and local administration of the SCHIP plan through analysis of the State's policies and procedures, on-site reviews of selected aspects of agency operation, and examination of samples of individual case records.

(b) *Action on review findings.* If Federal or State reviews reveal serious problems with respect to compliance with any Federal or State plan requirement, the State must correct its practice accordingly.

§ 457.202 Audits.

(a) *Purpose.* The Department's Office of Inspector General (OIG) periodically audits State operations in order to determine whether —

(1) The program is being operated in a cost-efficient manner; and

(2) Funds are being properly expended for the purposes for which they were appropriated under Federal and State law and regulations.

(b) *Reports.* (1) The OIG releases audit reports simultaneously to State officials and the Department's program officials.

(2) The reports set forth OIG opinion and recommendations regarding the practices it reviewed, and the allowability of the costs it audited.

(3) Cognizant officials of the Department make final determinations on all audit findings.

(c) *Action on audit exceptions.* (1) *Concurrence or clearance.* The State agency has the opportunity of concurring in the exceptions or submitting additional facts that support clearance of the exceptions.

(2) *Appeal.* Any exceptions that are not disposed of under paragraph (c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Appeals Board. (Specific rules are set forth in § 457.212.)

(3) *Adjustment.* If the decision by the Board requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.204 Withholding of payment for failure to comply with Federal requirements.

(a) *Basis for withholding.* HCFA withholds payments to the State, in whole or in part, only if, after giving the State notice, a reasonable opportunity for correction, and an opportunity for a hearing, the Administrator finds—

(1) That the plan is in substantial noncompliance with the requirements of title XXI of the Act; or

(2) That the State is conducting its program in substantial noncompliance with either the State plan or the requirements of title XXI of the Act. (Hearings are generally not called until a reasonable effort has been made to resolve the issues through conferences and discussions. These efforts may be continued even if a date and place have been set for the hearing.)

(b) *Noncompliance of the plan.* A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.

(c) *Noncompliance in practice.* A question of noncompliance in practice may arise from the State's failure to actually comply with a Federal requirement, regardless of whether the plan itself complies with that requirement.

(d) *Notice, reasonable opportunity for correction, and implementation of withholding.* If the Administrator makes a finding of noncompliance under paragraph (a) of this section, the following steps apply:

(1) *Preliminary notice.* The Administrator provides a preliminary notice to the State—

(i) Of the findings of noncompliance;

(ii) The proposed enforcement actions to withhold payments; and

(iii) If enforcement action is proposed, that the State has a reasonable opportunity for correction, described in paragraph (d)(2) of this section, before the Administrator takes final action.

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification.

(3) *Final notice.* Taking into account any evidence submitted by the State under paragraph (d)(2) of this section, the Administrator makes a final determination related to the findings of noncompliance, and provides a final notice to the State—

(i) Of the final determination on the findings of noncompliance;

(ii) If enforcement action is appropriate—

(A) No further payments will be made to the State (or that payments will be made only for those portions or aspects of the programs that are not affected by the noncompliance); and

(B) The total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(4) *Hearing.* An opportunity for a hearing will be provided to the State prior to withholding under paragraph (d)(5) of this section.

(5) Withholding. HCFA withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

§ 457.206 Administrative appeals under SCHIP.

Three distinct types of determinations are subject to Departmental reconsideration upon request by a State.

(a) *Compliance with Federal requirements.* A determination that a State's plan or proposed plan amendments, or its practice under the plan do not meet (or continue to meet) Federal requirements are subject to the hearing provisions of 42 CFR part 430, subpart D of this chapter.

(b) *FFP in State SCHIP expenditures.* Disallowances of FFP in State SCHIP expenditures (mandatory grants) are subject to Departmental reconsideration by the Departmental Appeals Board (the Board) in accordance with procedures set forth in 45 CFR part 16.

(c) *Discretionary grants disputes.* Determinations listed in 45 CFR part 16, appendix A, pertaining to discretionary grants, such as grants for special demonstration projects under Section 1115 of the Act, that may be awarded to an SCHIP agency, are subject to reconsideration by the Departmental Grant Appeals Board.

§ 457.208 Judicial review.

(a) *Right to judicial review.* Any State dissatisfied with the Administrator's final determination on approvability of plan material or compliance with Federal requirements (§ 457.204) has a right to judicial review.

(b) *Petition for review.* (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) After the clerk of the court files a copy of the petition with the Administrator, the Administrator files in the court the record of the proceedings on which the determination was based.

(c) *Court action.* (1) The court is bound by the Administrator's findings of fact, if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand.* (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.

(2) The Administrator certifies to the court the transcript and record of the further proceedings.

(e) *Review by the Supreme Court.* The judgment of the appeals court is subject to review by the U.S. Supreme Court upon certiorari or certification, as provided in 28 U.S.C. 1254.

§ 457.210 Deferral of claims for FFP.

(a) *Requirements for deferral.* Payment of a claim or any portion of a claim for FFP is deferred only if—

(1) The Regional Administrator or the Administrator questions its allowability and needs additional information in order to resolve the question; and

(2) HCFA takes action to defer the claim (by excluding the claimed amount from the grant award) within 60 days after the receipt of a Quarterly Statement of Expenditures (prepared in accordance with HCFA instructions) that includes that claim.

(b) *Notice of deferral and State's responsibility.* (1) Within 15 days of the action described in paragraph (a)(2) of this section, the Regional Administrator sends the State a written notice of deferral that—

(i) Identifies the type and amount of the deferred claim and specifies the reason for deferral; and

(ii) Requests the State to make available all the documents and materials the HCFA regional office believes are necessary to determine the allowability of the claim.

(2) It is the responsibility of the State to establish the allowability of a deferred claim.

(c) *Handling of documents and materials.* (1) Within 60 days (or within 120 days if the State requests an extension) after receipt of the notice of deferral, the State must make available to the HCFA regional office, in readily reviewable form, all requested documents and materials except any that it identifies as not being available.

(2) HCFA regional office staff initiates review within 30 days after receipt of the documents and materials.

(3) If the Regional Administrator finds that the materials are not in readily reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the Regional Administrator disallows the claim.

(5) The Regional Administrator has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the Regional Administrator cannot complete review of the material within 90 days, HCFA pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Regional Administrator or the Administrator gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

§ 457.212 Disallowance of claims for FFP.

(a) *Notice of disallowance and of right to reconsideration.* When the Regional Administrator or the Administrator determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) that contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) of this section.

(b) *Reconsideration of FFP disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XXI.

(2) A State may request reconsideration with a request to the Chair, Departmental Appeals Board, within 30 days after receipt of the disallowance letter, which must include—

(i) A copy of the disallowance letter;

(ii) A statement of the amount in dispute; and

(iii) A brief statement of why the disallowance is wrong.

(c) *Reconsideration procedures.* The reconsideration procedures are those set forth in 45 CFR part 16.

(d) *Implementation of decisions.* If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

§ 457.216 Treatment of uncashed or canceled (voided SCHIP checks).

(a) *Purpose.* This section provides rules to ensure that States refund the Federal portion of uncashed or canceled (voided) checks under title XXI.

(b) *Definitions.* As used in this section—

Canceled (voided) check means an SCHIP check issued by a State or fiscal agent that prior to its being cashed is canceled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

Fiscal agent means an entity that processes or pays vendor claims for the SCHIP agency.

Uncashed check means an SCHIP check issued by a State or fiscal agent that has not been cashed by the payee.

Warrant means an order by which the SCHIP agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was

issued; that is, the date of the check, it is no longer regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks that remain uncashed beyond a period of 180 days after issuance. The SCHIP agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued in accordance with the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for canceled (voided) checks*—(1) *General provisions.* If the State has claimed and received FFP for the amount of a canceled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the SCHIP agency must identify those checks that were canceled (voided). The State must refund all FFP that it received for canceled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

§ 457.218 Repayment of Federal funds by installments.

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal Funds by installments if the following conditions are met:

(1) The amount to be repaid exceeds 2½ percent of the estimated or actual annual State share for the State SCHIP program; and

(2) The State has given the Regional Administrator written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* HCFA determines whether the amount to be repaid exceeds 22 percent of the annual State share as follows:

(1) If the State SCHIP program is ongoing, HCFA uses the annual estimated State share of State SCHIP expenditures. This is the sum of the estimated State shares for four consecutive quarters, beginning with the quarter in which the first installment is to be paid, as shown on the State's latest HCFA–21B form.

(2) If the State SCHIP program has been terminated by Federal law or by the State, HCFA uses the actual State share. The actual State share is that shown on the State's Quarterly Statement of Expenditures reports for the last four quarters before the program was terminated.

(c) *Repayment amounts, schedules, and procedures*—(1) *Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The number of quarters allowed for repayment is determined on the basis of the ratio of the repayment amount to the annual State share of State SCHIP expenditures. The higher the ratio of the total repayment amount is to the annual State share, the greater the number of quarters allowed, as follows:

Total repayment amount as percentage of State share of annual expenditures for State SCHIP	Number of quarters to make repayment
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

(3) *Quarterly repayment amounts.* The quarterly repayment amounts for each of the quarters in the repayment schedule may not be less than the following percentages of the estimated State share of the annual expenditures for SCHIP:

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

(4) *Extended schedule.* The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of annual expenditures. In these circumstances, the repayment schedule in paragraph (c)(2) of this section is followed for repayment of the amount equal to 100 percent of the annual State share. The remaining amount of the repayment is in quarterly amounts equal to not less than 17.5 percent of the estimated State share of annual expenditures.

(5) *Repayment process.* Repayment is accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule. If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(6) *Offsetting of retroactive claims.* The amount of a retroactive claim to be paid a State is offset against any amounts to be, or already being, repaid by the State in installments. Under this provision, the State may choose to:

(A) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(B) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

(ii)A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more before the beginning of the quarter in which HCFA would pay that claim.

§ 457.220 Public funds as the State share of financial participation.

(a) Public funds may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The public funds are appropriated directly to the State or local SCHIP agency, or transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

(c) The public funds are not Federal funds, or are Federal funds authorized by the Federal law to be used to match other Federal funds.

§ 457.222 FFP for equipment.

Claims for Federal financial participation in the cost of equipment under SCHIP are determined in accordance with subpart G of 45 CFR part 95. Requirements concerning the management and disposition of equipment under SCHIP are also prescribed in subpart G of 45 CFR part 95.

§ 457.224 FFP: Conditions relating to cost sharing.

(a) No FFP is available for the following amounts, even when related to services or benefit coverage which is or could be provided under a State SCHIP program—

(1) Any cost sharing amounts that beneficiaries should have paid as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges.

(2) Any amounts paid by the agency for health benefits coverage or services furnished to individuals who would not be eligible for that coverage or those services under the approved State child health plan, whether or not the individual paid any required premium or enrollment fee.

(b) The amount of expenditures under the State child health plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

§ 457.226 Fiscal policies and accountability.

A State plan must provide that the SCHIP agency and, where applicable, local agencies administering the plan will—

(a) Maintain an accounting system and supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements;

(b) Retain records for 3 years from date of submission of a final expenditure report;

(c) Retain records beyond the 3-year period if audit findings have not been resolved; and

(d) Retain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

§ 457.228 Cost allocation.

A State plan must provide that the single or appropriate SCHIP Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

§ 457.230 FFP for State ADP expenditures.

FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures regarding the availability of FFP for ADP expenditures are in 45 CFR part 74, 45 CFR part 95, subpart F, and part 11, State Medicaid Manual.

§ 457.232 Refunding of Federal Share of SCHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.

(a) Quarterly Federal payments to the States under title XXI (SCHIP) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) The Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

(c) Allegations or indications of waste fraud and abuse with respect to the SCHIP program shall be referred promptly to the Office of Inspector General.

§ 457.234 State plan requirements.

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its State Children's Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, the applicable regulations in chapter IV, and other applicable official issuance of the Department. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for FFP in the State plan program.

§ 457.236 Audits.

The SCHIP agency must assure appropriate audit of records on costs of provider services.

§ 457.238 Documentation of payment rates.

The SCHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

Subparts C through E—[Reserved]

Subpart F Payments to States

§ 457.600 Purpose and basis of this subpart.

This subpart interprets and implements—

(a) Section 2104 of the Act which specifies the total allotment amount available for allotment to each State for child health assistance for fiscal years 1998 through 2007, the formula for determining each State allotment for a fiscal year, including the Commonwealth and Territories, and the amounts of payments for expenditures that are applied to reduce the State allotments.

(b) Section 2105 of the Act which specifies the provisions for making payment to States, the limitations and conditions on such payments, and the calculation of the enhanced Federal medical assistance percentage.

§ 457.602 Applicability.

The provisions of this subpart apply to the 50 States and the District of Columbia, and the Commonwealths and Territories.

§ 457.606 Conditions for State allotments and Federal payments for a fiscal year.

(a) *Basic conditions.* In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act, and

(1) For fiscal years 1998 and 1999, the State child health plan must be approved before October 1, 1999;

(2) For fiscal years after 1999, the State child health plan must be approved by the end of the fiscal year;

(3) An allotment for a fiscal year is not available to a State prior to the beginning of the fiscal year; and

(4) Federal payments out of an allotment are based on State expenditures which are allowable under the approved State child health plan.

(b) Federal payments for States' Children's Health Insurance Program (SCHIP) expenditures under an approved State child health plan are —

(1) Limited to the amount of available funds remaining in State allotments calculated in accordance with the allotment process and formula specified in §§ 457.608 and 457.610, and payment process in §§ 457.614 and 457.616.

(2) Available based on a percentage of State SCHIP expenditures, at a rate equal to the enhanced Federal medical assistance percentage (FMAP) for each fiscal year, calculated in accordance with § 457.622.

(3) Available through the grants process specified in § 457.630.

§ 457.608 Process and calculation of State allotments for a fiscal year.

(a) *General*—(1) State allotments for a fiscal year are determined by HCFA for each State and the District of Columbia with an approved State child health plan, as described in paragraph (e) of this section, and for each Commonwealth and Territory, as described in paragraph (f) of this section.

(2) In order to determine each State allotment, HCFA determines the national total allotment amount for each fiscal year available to the 50 States and the District of Columbia, as described in paragraph (c) of this section, and the total allotment amount available for each fiscal year for allotment to the Commonwealths and Territories, as described in paragraph (d) of this section.

(3) The amount of allotments redistributed under section 2104(f) of the Act will not be applied or taken into account in determining the amounts of a fiscal year allotment for a State and the District of Columbia under this section.

(b) *Definition of Proportion.* As used in this section, *proportion* means the amount of the allotment for a State or the District of Columbia for a fiscal year, divided by the national total allotment amount available for allotment to all States and the District of Columbia, as specified in paragraph (c) of this section, for that fiscal year.

(c) *National total allotment amount for the 50 States and the District of Columbia.* (1) The national total allotment amount available for allotment to the 50 States and the District of Columbia is determined by subtracting the following amounts in the following order from the total appropriation specified in section 2104(a) of the Act for the fiscal year —

(i) The total allotment amount available for allotment for each fiscal year to the Commonwealths and Territories, as determined in paragraph (d)(1) of this section;

(ii) The total amount of the grant for the fiscal year for children with Type I Diabetes under Section 4921 of Public Law 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002; and

(iii) The total amount of the grant for the fiscal year for diabetes programs for Indians under Section 4922 of Public Law 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(2) The following formula illustrates the calculation of the national total allotment amount available for allotment to the 50 States and the District of Columbia for a fiscal year:

$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = National total allotment amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in Section 2104(a) of the Act.

$T_{2104(c)}$ = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; as determined under paragraph (d)(1) of this section.

D_{4921} = Amount of total grant for children with Type I Diabetes under Section 4921 of Public Law 105–33. This is $30,000,000 for each of the fiscal years 1998 through 2002.

(d) *Total allotment amount available to the Commonwealths and Territories.* (1) *General.* The total allotment amount available to all the Commonwealths and Territories for a fiscal year is equal to .25 percent of the total appropriation for the fiscal year indicated in section 2104(a) of the Act, plus the additional amount for the fiscal year specified in paragraph (d)(2) of this section.

(2) *Additional amounts for allotment to the Commonwealths and Territories.* The following amounts are available for allotment to the Commonwealths and Territories for the indicated fiscal years in addition to the amount specified in paragraph (d)(1) of this section: For FY 1999, $32 million; for each of FY 2000 and FY 2001, $34.2 million; for each fiscal year FY 2002 through 2004, $25.2 million; for each fiscal year FY 2005 and FY 2006, $32.4 million; and for FY 2007, $40 million. The additional amount for allotment for FY 1999 for the Commonwealths and Territories was provided under Public Law 105–277. The additional amounts for allotment for FY 2000 through FY 2007 were provided for the Commonwealths and Territories under section 702 of Public Law 106–113.

(e) *Determination of State allotments for a fiscal year.* (1) *General.* The allotment for a State and the District of Columbia for a fiscal year is the product of:

(i) The proportion for the State or the District of Columbia for the fiscal year, as defined in paragraph (b) of this section, and determined after application of the provisions of paragraphs (e)(2) and (3), related to the preadjusted proportion, and the floors, ceilings, and reconciliation process, respectively; and

(ii)(A) The national total allotment amount available for allotment for the fiscal year, as specified in paragraph (c) of this section. The State and the District of Columbia's allotment for a fiscal year is determined in accordance with the following general formula:

$SA_i = P_i \times A_{TA}$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

(B) There are two steps for determining the proportion for a State and the District of Columbia. The first step determines the preadjusted proportions, and is described under paragraph (e)(2) of this section. The first step applies in determining the proportion for all fiscal years. The second step applies floors and ceilings and, if necessary, applies a reconciliation to the preadjusted proportion. The second step is described in paragraph (e)(3) of this section. The second step applies in determining the proportion only for FY 2000 and subsequent fiscal years. For FY 1998 and FY 1999, the preadjusted proportion is the State or District of Columbia's proportion for the fiscal year.

(2) *Determination of the Preadjusted Proportions for a Fiscal Year.* (i)The methodology for determining the State preadjusted proportion, referring to the determination of the proportion before the application of floors and ceilings and reconciliation for a fiscal year is in accordance with the following formula:

$PP_i = (C_i \times SCF_i) / \Sigma(C_i \times\times SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(I) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census, and for FY 2000 and subsequent fiscal years, officially available before the beginning of the calendar year in which the fiscal year begins. For FY 1998 and FY 1999, the availability of the CPS data obtained from the Bureau of the Census is as specified in paragraphs (e)(4) and (5) of this

section, respectively. (section 2104(b)(2)(B) of the Act).

(ii)For each of the fiscal years 1998 and 1999, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2000, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2001 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year. (section 2104(b)(2)(A) of the Act).

SCF_i = *State cost factor for a State* (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to: $.15 + .85 \times (W_i/W_N)$ (section 2104(b)(3)(A) of the Act).

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act). The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years, and for FY 2000 and subsequent fiscal years, finally available before the beginning of the calendar year in which the fiscal year begins. For FY 1998 and FY 1999, the availability of the wage data obtained from the Bureau of Labor Statistics is as specified in paragraphs (e)(4) and (5), respectively. (section 2104(b)(3)(B) of the Act).

$\Sigma(C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year as determined under paragraph (c) of this section.

(3) *Application of floors and ceilings and reconciliation in determining proportion.* (i) *Floors and ceilings in proportions.* The preadjusted State proportions for a fiscal year are subject to the application of floors and ceilings in paragraphs (e)(3)(i)(A) and (B) of this section..

(A) The proportion floors, or minimum proportions, that apply in determining a State's proportion for the fiscal year are:

(*1*) $2,000,000 divided by the total of the amount available nationally;

(*2*) 90 percent of the State's proportion for the previous fiscal year; and

(*3*) 70 percent of the State's proportion for FY 1999.

(B) The proportion ceiling, or maximum proportion, for a fiscal year that applies in determining the State's fiscal year proportion is 145 percent of the State's proportion for FY 1999.

(ii) *Reconciliation of State proportions.* If, after the application of the floors and ceilings in paragraph (e)(3)(i), the sum of the States' proportions is not equal to one, the Secretary will reconcile the States' proportions by applying either paragraph (e)(3)(i)(A) or (B) of this paragraph, as appropriate, such that the sum of the proportions after reconciliation equals one. If, after the application of the floors and ceilings in paragraph (e)(3)(i), the sum of the States' proportions is equal to one, no reconciliation is necessary, and the States' proportions will be the same as the preadjusted proportions determined under paragraph (e)(2) of this section.

(A) If, after the application of the floors and ceilings under paragraphs (e)(3)(i)(A) and (B) of this section, the sum of the States' proportions is greater than one, the Secretary will establish a maximum percentage increase in States' proportions, such that when applied to the States' proportions, the sum of the proportions is exactly equal to one.

(B) If, after the application of the floors and ceilings under paragraphs (e)(3)(i)(A) and (B), the sum of the proportions is less than one, the Secretary will increase States' proportions (as computed before the application of the floors under paragraph (e)(3)(i)(A)) in a pro rata manner (but not to exceed the 145 percent ceiling computed under paragraph (e)(3)(i)(B)), such that when applied to the States' proportions, the sum of the proportions is exactly equal to one.

(4) *Data used for calculating the FY 1998 SCHIP allotments.* The FY 1998 SCHIP allotments were calculated in accordance with the methodology described in paragraphs (e)(1) and (2) of this section, using the most recent official and final data that were available from the Bureau of the Census and the Bureau of Labor Statistics, respectively, prior to the September 1 before the beginning of FY 1998 (that is, through August 31, 1997). In particular, through August 31, 1997, the only official data available on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995.

(5) *Data used for calculating the FY 1999 SCHIP allotments.* In accordance with section 101(f) of Public Law 105–277, the FY 1999 allotments were calculated in accordance with the methodology described in paragraph (e)(2) of this section, using the same data as were used in calculating the FY 1998 SCHIP allotments.

(f) *Methodology for determining the Commonwealth and Territory allotments for a fiscal year.* The total amount available for the Commonwealths and Territories for each fiscal year, as determined under paragraph (d) of this section, is allotted to each Territory and Commonwealth below which has an approved State child health plan. These allotments are in the proportion that the following percentages for each Commonwealth Territory bear to the sum of such percentages, as specified in section 2104(c)(2) of the Act:

Puerto Rico—91.6%
Guam—3.5%
Virgin Islands—2.6%
American Samoa—1.2%
Northern Mariana Islands—1.1%

(g) *Reserved State allotments for a fiscal year.* (1) For FY 2000 and subsequent fiscal years, HCFA determines and publishes the State reserved allotments for a fiscal year for each State, the District of Columbia, and Commonwealths and Territories in the **Federal Register** based on the most recent official and final data available before the beginning of the calendar year in which the fiscal year begins for the number of children and the State cost factor.

(2) For FY 1998 and FY 1999, HCFA determined and published the State reserved allotments using the available data described in paragraphs (e)(4) and (e)(5) of this section, respectively, on the basis of the statutory allotment formula as it existed prior to the enactment of Public Law 106–113.

(3) If all States, the District of Columbia, and the Commonwealths and Territories have approved State child health plans in place prior to the beginning of the fiscal year, as appropriate, HCFA may publish the allotments as final in the **Federal Register**, without the need for publication as reserved allotments.

(h) *Final allotments.* (1) Final State allotments for FY 1998 and FY 1999 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of fiscal year 1999, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(2) Final State allotments for a fiscal year after FY 1999 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of the fiscal year, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(3) HCFA determines and publishes the States' final fiscal year allotments in the **Federal Register** based on the same data, with respect to the number of children and State cost factor, as were used in determining the reserved allotments for the fiscal year.

§ 457.610 Period of availability for State allotments for a fiscal year.

The amount of a final allotment for a fiscal year, as determined under § 457.608(h) and reduced to reflect certain Medicaid expenditures in accordance with § 457.616, remains available until expended for Federal payments based on expenditures claimed during a 3-year period of availability, beginning with the fiscal year of the final allotment and ending with the end of the second fiscal year following the fiscal year.

§ 457.614 General payment process.

(a) A State may make claims for Federal payment based on expenditures incurred by the State prior to or during the period of availability related to that fiscal year.

(b) In order to receive Federal financial participation (FFP) for a State's claims for payment for the State's expenditures, a State must —

(1) Submit budget estimates of quarterly funding requirements for Medicaid and the State Children's Health Insurance Programs; and

(2) Submit an expenditure report.

(c) Based on the State's quarterly budget estimates, HCFA —

(1) Issues an advance grant to a State as described in § 457.630;

(2) Tracks and applies Federal payments claimed quarterly by each State, the District of Columbia, and each Commonwealth and Territory to ensure that payments do not exceed the applicable allotments for the fiscal year; and

(3) Track and apply relevant State, District of Columbia, Commonwealth and Territory expenditures reported each quarter against the 10 percent limit on expenditures other than child health assistance for standard benefit package, on a fiscal year basis as specified in § 457.618.

§ 457.616 Application and tracking of payments against the fiscal year allotments.

(a) *Categories of payments applied to reduce the State allotments.* In accordance with the principles described in paragraph (c) of this section, the following categories of payments are applied to reduce the State allotments for a fiscal year:

(1) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(2) of the Act.

(2) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(3) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI State Children's Health Insurance Program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

(b) *Application of principles.* HCFA applies the principles in paragraph (c) of this section to —

(1) Coordinate the application of the payments made to a State for the State's expenditures claimed under the Medicaid and State Children's Health Insurance programs against the State allotment for a fiscal year;

(2) Determine the order of these payments in that application; and

(3) Determine the application of payments against multiple State Child Health Insurance Program fiscal year allotments.

(c) *Principles for applying Federal payments against the allotment.* HCFA—

(1) Applies the payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, against the State child health plan allotment for a fiscal year before State child health plan expenditures specified in paragraph (a)(4) of this section are applied.

(2) Applies the payments attributable to Medicaid and State child health plan expenditures specified in paragraph (a) of this section against the applicable allotments for a fiscal year based on the quarter in which the expenditures are claimed by the State.

(3) Applies payments against the State allotments for a fiscal year in a manner that is consistent for all States.

(4) Applies payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, in an order that maximizes Federal reimbursement for States. Expenditures for which the enhanced FMAP is available are applied before expenditures for which the regular FMAP is available.

(5) Applies payments for expenditures against State Child Health Insurance Program fiscal year allotments in the least administratively burdensome, and most effective and efficient manner; payments are applied on a quarterly basis as they are claimed by the State, and are applied to reduce the earliest fiscal year State allotments before the payments are applied to reduce later fiscal year allotments.

(6) Subject to paragraphs (c)(6)(i) and (ii) of this section, applies payments for expenditures for a fiscal year's allotment against a subsequent fiscal year's allotment; however, the subsequent fiscal year's allotment must be available at the time of application. For example, if the allotment for fiscal year 1998 has been fully expended, payments for expenditures claimed in fiscal year 1998 are carried over for application against the fiscal year 1999 allotment when it becomes available.

(i) In accordance with § 457.618, the amount of non-primary expenditures that are within the 10 percent limit for the fiscal year for which they are claimed may be applied against a fiscal year allotment or allotments available in a subsequent fiscal year.

(ii) In accordance with § 457.618, the amounts of non-primary expenditures that exceed the 10 percent limit for the fiscal year for which they are claimed may not be applied against a fiscal year allotment or allotments available in a subsequent fiscal year.

(7) Carries over unexpended amounts of a State's allotment for a fiscal year for use in subsequent fiscal years through the end of the 3-year period of availability. For example, if the amounts of the fiscal year 1998 allotment are not fully expended by the end of fiscal year 1998, these amounts are carried over to fiscal year 1999 and are available to provide FFP for expenditures claimed by the State for that fiscal year.

(d) *Amount of Federal payment for expenditures claimed.* The amount of the Federal payment for expenditures claimed by a State, District of Columbia, or the Commonwealths and Territories is determined by the enhanced FMAP applicable to the fiscal year in which the State paid the expenditure. For example, Federal payment for an expenditure paid by a State in fiscal year 1998 that was carried over to fiscal year 1999 (in accordance with paragraph(c)(6) of this section), because the State exceeded its fiscal year 1998 allotment, is available at the fiscal year 1998 enhanced FMAP rate.

§ 457.618 Ten percent limit on certain State Children's Health Insurance Program expenditures.

(a) *Expenditures.* (1) *Primary expenditures* are expenditures under a State plan for child health assistance to targeted low-income children in the form of a standard benefit package, and Medicaid expenditures claimed during the fiscal year to the extent Federal payments made for these expenditures on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act that are used to calculate the 10 percent limit.

(2) *Non-primary expenditures* are other expenditures under a State plan. Subject to the 10 percent limit described in paragraph (c) of this section, a State may receive Federal funds at the enhanced FMAP for 4 categories of non-primary expenditures:

(i) Administrative expenditures;

(ii) Outreach;

(iii) Health initiatives; and

(iv) Certain other child health assistance.

(b) *Federal payment.* Federal payment will not be available based on a State's non-primary expenditures for a fiscal year which exceed the 10 percent limit of the total of expenditures under the plan, as specified in paragraph (c) of this section.

(c) *10 Percent Limit.* The 10 percent limit is —

(1) Applied on an annual fiscal year basis;

(2) Calculated based on the total computable expenditures claimed by the State on quarterly expenditure reports submitted for a fiscal year. Expenditures claimed on a quarterly report for a different fiscal year may not be used in the calculation; and

(3) Calculated using the following formula:

L10% = (a1+ u2+ u3)/9;

L10% = 10 Percent Limit for a fiscal year

a1 = Total computable amount of expenditures for the fiscal year under section 2105(a)(1) of the Act for which Federal payments are available at the enhanced FMAP described in Section 2105(b) of the Act;

U2 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(2) of the Act; and

u3 = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(3) of the Act.

(d) The expenditures under section 2105(a)(2) of the Act that are subject to the 10 percent limit are applied —

(1) On an annual fiscal year basis; and

(2) Against the 10 percent limit in the fiscal year for which the State submitted a quarterly expenditure report including the expenditures. Expenditures claimed on a quarterly report for one fiscal year may not be applied against the 10 percent limit for any other fiscal year.

(e)(1) The 10 percent limit for a fiscal year, as calculated under paragraph (c)(3) of this section, may be no greater than 10 percent of the total computable amount (determined under paragraph (e)(2) of this section) of the State allotment or allotments available in that fiscal year. Therefore, the 10 percent limit is the lower of the amount calculated under paragraph (c)(3) of this section, and 10 percent of the total computable amount of the State allotment available in that fiscal year.

(2) As used in paragraph (e)(1) of this section, the total computable amount of a State's allotment for a fiscal year is determined by dividing the State's allotment for the fiscal year by the State's enhanced FMAP for the year. For example, if a State allotment for a fiscal year is $65 million and the enhanced FMAP rate for the fiscal year is 65 percent, the total computable amount of the allotment for the fiscal year is $100 million ($65 million/.65). In this example, the 10 percent limit may be no greater than a total computable amount of $10 million (10 percent of $100 million).

§ 457.622 Rate of FFP for State expenditures.

(a) *Basis.* Sections 1905(b), 2105(a) and 2105(b) of the Act provides for payments to States from the States' allotments for a fiscal year, as determined under § 457.608, for part of the cost of expenditures for services and administration made under an approved State child health assistance plan. The rate of payment is generally the enhanced Federal medical assistance percentage described below.

(b) *Enhanced Federal medical assistance percentage (Enhanced FMAP)— Computations.* The enhanced FMAP is the lower of the following:

(1) 70 percent of the regular FMAP determined under section 1905(b) of the Act, plus 30 percentage points; or

(2) 85 percent.

(c) *Conditions for availability of enhanced FMAP based on a State's expenditures*—The enhanced FMAP is available for payments based on a State's expenditures claimed under the State's title XXI program from the State's fiscal year allotment only under the following conditions:

(1) The State has an approved title XXI State child health plan;

(2) The expenditures are allowable under the State's approved title XXI State child health plan;

(3) State allotment amounts are available in the fiscal year, that is, the State's allotment or allotments (as reduced in accordance with § 457.616) remain available for a fiscal year and have not been fully expended.

(4) Expenditures claimed against the 10 percent limit are within the State's 10 percent limit for the fiscal year.

(5) The State is in compliance with the maintenance of effort requirements of Section 2105(d)(1) of the Act.

(d) *Categories of expenditures for which enhanced FMAP are available.* Except as otherwise provided below, the enhanced FMAP is available with respect to the following States' expenditures:

(1) Child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 of the Act; and

(2) Subject to the 10 percent limit provisions under § 457.618(a)(2), the following expenditures:

(i) Payment for other child health assistance for targeted low-income children;

(ii) Expenditures for health services initiatives under the State child health assistance plan for improving the health

of children (including targeted low-income children);

(iii) Expenditures for outreach activities; and

(iv) Other reasonable costs incurred by the State to administer the State child health assistance plan.

(e) *SCHIP administrative expenditures and SCHIP related title XIX administrative expenditures.* (1) *General rule.* Allowable title XXI administrative expenditures should support the operation of the State child health assistance plan. In general, FFP for administration under title XXI is not available for costs of activities related to the operation of other programs.

(2) *Exception.* FFP is available under title XXI, at the enhanced FFP rate, for Medicaid administrative expenditures attributable to the provision of medical assistance to children described in sections 1905(u)(2) and 1905(u)(3), and during the presumptive eligibility period described in section 1920A of the Act, to the extent that the State does not claim those costs under the Medicaid program.

(3) FFP is not available in expenditures for administrative activities for items or services included within the scope of another claimed expenditure.

(4) FFP is available in expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in such a program.

(5) FFP is available in administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State Children's Health Insurance Program with other public and private health insurance programs. FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

§ 457.624 Limitations on certain payments for certain expenditures.

(a) *Abortions.* (1) *General rule.* Payment is not made for any State expenditures to pay for abortions or to assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

(2) *Exception.* Payment may be made for expenditures for health benefits coverage and services that include abortions that are necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(b) *Waiver for purchase of family coverage.* Payment may be made to a State with an approved State child health plan for the purchase of family coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that —

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage will not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

§ 457.626 Prevention of duplicate payments.

(a) *General rule.* No payment shall be made to a State for expenditures for child health assistance under its State child health plan to the extent that:

(1) A non-governmental health insurer would have been obligated to pay for those services but for a provision of its insurance contract that has the effect of limiting or excluding those obligations based on the actual or potential eligibility of the individual for child health assistance under the State child health insurance plan.

(2) Payment has been made or can reasonably be expected to be made promptly under any other Federally operated or financed health insurance or benefits program, other than a program operated or financed by the Indian Health Service.

(b) *Definitions.* As used in paragraph (a) of this section —

Non-governmental health insurer includes any health insurance issuer, group health plan, or health maintenance organization, as those terms are defined in 45 CFR 144.103, which is not part of, or wholly owned by, a governmental entity.

Prompt payment can reasonably be expected when payment is required by applicable statute, or under an approved State plan.

Programs operated or financed by the Indian Health Service means health programs operated by the Indian Health Service, or Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement or compact with the Indian Health Service under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), or by an urban Indian organization in accordance with a grant or contract with the Indian Health Service under the authority of title V of the Indian Health Care Improvement Act (25 U.S.C. 1601, *et seq.*).

§ 457.628 Other applicable Federal regulations.

Other regulations applicable to SCHIP programs include the following:

(a) HHS regulations in 42 CFR Subpart B—433.51–433.74 sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations; these regulations apply to States' SCHIPs in the same manner as they apply to States' Medicaid programs.

(b) HHS Regulations in 45 CFR subtitle A:

Part 16—Procedures of the Departmental Appeals Board.
Part 74—Administration of Grants (except as specifically excepted).
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964.
Part 81—Practice and Procedure for Hearings Under 45 CFR part 80.
Part 84—Nondiscrimination on the Basis of Handicap in Programs and activities Receiving or Benefiting From Federal Financial Assistance.
Part 95—General Administration—grant programs (public assistance and medical assistance).

§ 457.630 Grants procedures.

(a) *General provisions.* Once HCFA has approved a State child health plan, HCFA makes quarterly grant awards to the State to cover the Federal share of expenditures for child health assistance, other child health assistance, special health initiatives, outreach and administration.

(1) For fiscal year 1998, a State must submit a budget request in an appropriate format for the 4 quarters of the fiscal year. HCFA bases the grant awards for the 4 quarters of fiscal year 1998 based on the State's budget requests for those quarters.

(2) For fiscal years after 1998, a State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. HCFA bases the grant awards for the first 3 quarters of the fiscal year on the State's budget requests for those quarters.

(3) For fiscal years after 1998, a State must also submit a budget request for the fourth quarter of the fiscal year. The amount of this quarter's grant award is based on the difference between a

State's final allotment for the fiscal year, and the total of the grants for the first 3 quarters that were already issued in order to ensure that the total of all grant awards for the fiscal year are equal to the State's final allotment for that fiscal year.

(4) The amount of the quarterly grant is determined on the basis of information submitted by the State (in quarterly estimate and quarterly expenditure reports) and other pertinent information. This information must be submitted by the State through the Medicaid Budget and Expenditure System (MBES) for the Medicaid program, and through the Child Health Budget and Expenditure System (CBES) for the title XXI program.

(b) *Quarterly estimates.* The State Children's Health Insurance Program agency must submit Form HCFA–21B (State Children's Health Insurance Program Budget Report for State Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

(c) *Expenditure reports.* (1) The State must submit Form HCFA–64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA–21 (Quarterly State Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

(2) This report is the State's accounting of actual recorded expenditures. This disposition of Federal funds may not be reported on the basis of estimates.

(d) *Additional required information.* A State must provide HCFA with the following information regarding the administration of the title XXI program:

(1) Name and address of the State Agency/organization administering the program;

(2) The employer identification number (EIN); and

(3) A State official contact name and telephone number.

(e) *Grant award.* (1) *Computation by HCFA.* Regional office staff analyzes the State's estimates and sends a recommendation to the central office. Central office staff considers the State's estimates, the regional office recommendations and any other relevant information, including any adjustments to be made under paragraph (e)(2) of this section, and computes the grant.

(2) *Content of award.* The grant award computation form shows the estimate of expenditures for the ensuing quarter, and the amounts by which that estimate is increased or decreased because of an increase or overestimate for prior quarters, or for any of the following reasons:

(i) Penalty reductions imposed by law.

(ii) Deferrals or disallowances.

(iii) Interest assessments.

(iv) Mandated adjustments such as those required by Section 1914 of the Act.

(3) *Effect of award.* The grant award authorizes the State to draw Federal funds as needed to pay the Federal share of disbursements.

(4) *Draw procedure.* The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. (The letter of credit payment system was established in accordance with Treasury Department regulations—Circular No.1075.)

(f) *General administrative requirements.* With the following exceptions, the provisions of 45 CFR part 74, that establish uniform administrative requirements and cost principles, apply to all grants made to States under this subpart:

(1) Subpart G—Matching and Cost Sharing; and

(2) Subpart I—Financial Report Requirement.

C. 45 CFR part 92 is amended as follows:

PART 92—UNIFORM ADMINISTRATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 301.

2. Section 92.4 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(v), and adding a new paragraph (a)(3)(vi) to read as follows:

§ 92.4 Applicability.

(a) * * *

(3) * * *

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act);

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B); and

(vi) State Children's Health Insurance Program (title XXI of the Act).

* * * * *

D. 45 CFR part 95 is amended as follows:

1. The title of part 95 is revised to read as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS)

2. The authority citation for part 95 is revised to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b-2; sec. 306(b), 94 Stat. 530, 42 U.S.C. 1320b-2note, unless otherwise noted.

Subpart A—Time Limits for States To File Claims

3. In § 95.1(a), title XXI is added in numerical order immediately following title XX as follows:

§ 95.1 Scope.

(a) * * *

Title XXI—Grants to States for State Children's Health Insurance Programs.

4. In § 95.4, the definition of ''State agency'' is revised to read as follows:

§ 95.4 Definitions.

* * * * *

State agency for the purposes of expenditures for financial assistance under title IV–A and for support enforcement services under title IV–D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under titles XIX and XXI, means any agency of the State, including the State Medicaid agency or State Child Health Agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations.

* * * * *

5. In § 95.13, paragraph (b) and the first sentence of paragraph (d) are revised to read as follows:

§ 95.13 In which quarter we consider an expenditure made.

* * * * *

(b) We consider a State agency's expenditure for services under title I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD) , XIX, or XXI to have been made in the quarter in which any State agency made a payment to the service provider.

* * * * *

(d) We consider a State agency's expenditure for administration or training under titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI (AABD), XIX, or XXI to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. * * *

Subpart E—Cost Allocation Plans

6. Section 95.503 is revised to read as follows:

§ 95.503 Scope.

This subpart applies to all State agency costs applicable to awards made under titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX, and XXI, of the Social Security Act, and under the Refugee Act of 1980, title IV, Chapter 2 of the Immigration and Nationality Act (8 U.S.C. 1521 *et seq.*), and under title V of Pub. L. 96–422, the Refugee Education Assistance Act of 1980.

7. Section 95.507(a)(3) is revised to read as follows:

§ 95.507 Plan requirements.

(a) * * * (3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapter II, III and XIII, and 42 CFR Chapter IV Subchapters C and D; and

* * * * *

Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

8. Section 95.601 is revised to read as follows:

§ 95.601 Scope and applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will approve Federal financial participation (FFP) at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, or XXI of the Social Security Act and title IV chapter 2 of the Immigration and Nationality Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of ADP equipment and services under the specified titles of the Social Security Act.

9. In § 95.605, the definitions of ''approving component'', ''operation'', ''regular matching rate'', and ''State agency'' are revised to read as follows:

§ 95.605 Definitions.

* * * * *

Approving component means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. Family Support Administration (FSA) for cash assistance for titles I, IV–A, X, XIV, and XVI(AABD); Office of Human Development Services (OHDS) for social services for titles IV–B (child welfare services) and IV–E (foster care and adoption assistance); Family Support Administration (FSA) for title IV–D; and Health Care Financing Administration (HCFA) for titles XIX and XXI of the Social Security Act.

* * * * *

Operation means the automated processing of data used in the administration of State plans for titles I, IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV–A and IV–D, and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

Regular matching rate means the normal rate of FFP authorized by titles IV–A, IV–B, IV–D, IV–E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency administration of programs authorized by those titles.

* * * * *

State agency means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

* * * * *

10. In § 95.703 the definition of ''Public Assistance Programs'' is revised to read as follows:

§ 95.703 Definitions.

* * * * *

Public Assistance Programs means programs authorized by titles I, IV–A, IV–B, IV–C, IV–D, IV–E, X, XIV, XVI (AABD), XIX and XXI of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96–212).

* * * * *

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 22, 2000.

Nancy Ann-Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–12879 Filed 5–23–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2064 N]

RIN 0938–AJ77

State Children's Health Insurance Program; Final Allotments to States, Commonwealths, and Territories for Fiscal Years 1998 and 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the final allotments of Federal funding available to each State, Commonwealth and Territory for fiscal years (FYs) 1998 and 1999 under title XXI of the Social Security Act (the Act). The final allotments are the same as the reserved allotments previously published in the **Federal Register** on February 8, 1999.

Established by section 4901 of the Balanced Budget Act of 1997 (Public Law 105–33), title XXI of the Act authorizes payment of Federal matching funds to States, Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children through a State Children's Health Insurance Program (SCHIP), an expansion of a State Medicaid program, or a combination of both.

Recent legislation, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted November 29, 1999), amended title XXI of the Act in part by modifying the allotment formula, effective with the FY 2000 allotments. The FY 1998 and 1999 allotments contained in this notice were determined under the allotment formula in existence prior to the enactment of Public Law 106–113.

ADDRESSES: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su——docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

The reserved FY 1998 allotments were originally published on September 12, 1997 in the **Federal Register** (62 FR 48098). On February 8, 1999, revised reserved FY 1998 allotments and reserved FY 1999 allotments were published in the **Federal Register** (64 FR 6102). The allotments were originally published as reserved because not all States, Commonwealths, and Territories had submitted and had State child health plans approved by HCFA. Final allotments may only be provided to those with approved plans. For purposes of planning and budgeting, the reserved FYs 1998 and 1999 allotments were calculated as if all States, Commonwealths and Territories had approved State child health plans.

Public Law 105–174, enacted on May 1, 1998, provides that for purposes of the calculation of allotments, a State child health plan approved by HCFA on or after October 1, 1998, and before October 1, 1999, must be treated as having been approved for both FYs 1998 and 1999. Because all States, Commonwealths, and Territories had approved plans prior to the end of FY 1999, the final FYs 1998 and 1999 SCHIP allotments are available to all of them and are, therefore, the same as the reserved allotments published on February 8, 1999.

While none of the provisions of Public Law 106–113 take effect retroactively, one provision of the legislation is incorporated into this notice due to the fact that the new legislation was enacted prior to the publication of this final notice. Specifically, section 704 of the BBRA of 1999 requires that the program enacted by title XXI of the Act be referred to exclusively as ''SCHIP'' rather than ''CHIP'' and that the term ''State children's health insurance program'' be substituted for ''children's health insurance program.'' This provision applies to the Secretary of the U.S. Department of Health and Human Services, as well as any other Federal officer or employee, in any publication or other official communication.

II. Purpose of This Notice

This notice sets forth the final allotments of Federal funding available to each State, Commonwealth and Territory for fiscal years (FYs) 1998 and 1999 under title XXI of the Social Security Act. Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for three fiscal years, including the year for which the final allotment was provided. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, Commonwealth and Territory with an approved child health plan, as described under section III of the February 8, 1999 **Federal Register** notice (64 FR 6102).

Section 2104(b) of the Act indicates that ''the Secretary shall allot to each State * * * with a State child health plan approved under this title.'' This language requires States, Commonwealths, and Territories to have an approved State child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. If a State, Commonwealth, or Territory does not have an approved State child health plan for that fiscal year, the amount of their reserved allotment would be unavailable to them and would be allotted to those with approved State child health plans. On September 8, 1999, the last two States seeking approval for their State child health plans were granted approval. Since all States, Commonwealths, and Territories had approved plans prior to the end of FY 1999, this notice merely republishes as final the same FYs 1998 and 1999 allotments that were originally published as reserved allotments in the February 8, 1999 **Federal Register** notice.

We issued a proposed rule on March 4, 1999 in **Federal Register** (64 FR 10412), on the requirements for the allotment and payment process under title XXI. The allotments set forth in this notice were calculated in accordance

with the process set forth in that proposed rule.

For informational purposes, we are republishing the FYs 1998 and 1999 allotment charts below, which are the same as those published in the February 8, 1999 notice.

III. Table of State Children's Health Insurance Program Final Allotments for FYs 1998 and 1999

Key to Tables I and II

Column/Description

Column A = Name of State, Commonwealth, or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the 1994, 1995, and 1996 March supplements to the Current Population Survey, as adjusted in August 1998. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual Current Population Surveys on these topics. For FYs 1998 and 1999, the Number of Children is equal to the number of low-income children in each State with no health insurance for the fiscal year.

Column C=State Cost Factor. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported, determined, and provided to HCFA by the Bureau of Labor Statistics in the Department of Labor for 1993, 1994, and 1995.

Column D=Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States.

Column E=Percent Share of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F=Allotment. This is the State Child Health Program allotment for each State, Commonwealth, or Territory. For each of the 50 States and the District of Columbia, this is determined as the Percent Share of Total in Column E for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the Commonwealths and Territories, the allotment is determined as the Percent Share of Total in Column E multiplied by the total amount available for allotment to the Commonwealths and Territories. For the Commonwealths and Territories, the Percent Share of Total in Column E is specified in section 2104(c) of the Act. For FY 1999, the Commonwealths and Territories were allotted an additional $32 million, which is added to the total allotment available to them for FY 1999, determined by the formula described above. The total amount is then allotted to the Commonwealths and Territories according to the percentages specified in section 2104 of the Act.

BILLING CODE 4120–01–P

STATE CHILDREN'S HEALTH INSURANCE PROGRAM FINAL ALLOTMENTS FOR FISCAL YEAR:					1998
A	B	C	D	E	F
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PERCENT SHARE OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	154	0.9510	146.46	2.04%	$85,975,213
ALASKA	11	1.0669	11.74	0.16%	$6,889,296
ARIZONA	190	1.0472	198.97	2.76%	$116,797,799
ARKANSAS	92	0.8871	81.61	1.13%	$47,907,958
CALIFORNIA	1,281	1.1365	1,455.92	20.23%	$854,644,807
COLORADO	72	0.9888	71.19	0.99%	$41,790,547
CONNECTICUT	53	1.1237	59.55	0.83%	$34,959,075
DELAWARE	13	1.0553	13.72	0.19%	$8,053,463
DISTRICT OF COLUMBIA	16	1.2857	20.57	0.29%	$12,076,002
FLORIDA	444	1.0368	460.32	6.40%	$270,214,724
GEORGIA	214	0.9923	212.36	2.95%	$124,660,136
HAWAII	13	1.1722	15.24	0.21%	$8,945,304
IDAHO	31	0.8726	27.05	0.38%	$15,879,707
ILLINOIS	211	0.9892	208.73	2.90%	$122,528,573
INDIANA	131	0.9169	120.12	1.67%	$70,512,432
IOWA	67	0.8253	55.30	0.77%	$32,460,463
KANSAS	60	0.8704	52.22	0.73%	$30,656,520
KENTUCKY	93	0.9146	85.06	1.18%	$49,932,527
LOUISIANA	194	0.8934	173.31	2.41%	$101,736,841
MAINE	24	0.8863	21.27	0.30%	$12,486,977
MARYLAND	100	1.0498	104.98	1.46%	$61,627,358
MASSACHUSETTS	69	1.0576	72.97	1.01%	$42,836,231
MICHIGAN	156	1.0001	156.02	2.17%	$91,585,508
MINNESOTA	50	0.9675	48.37	0.67%	$28,395,980
MISSISSIPPI	110	0.8675	95.43	1.33%	$56,017,103
MISSOURI	97	0.9075	88.03	1.22%	$51,673,123
MONTANA	24	0.8333	20.00	0.28%	$11,740,395
NEBRASKA	30	0.8440	25.32	0.35%	$14,862,926
NEVADA	43	1.2046	51.80	0.72%	$30,407,067
NEW HAMPSHIRE	20	0.9760	19.52	0.27%	$11,458,404
NEW JERSEY	134	1.1241	150.62	2.09%	$88,417,899
NEW MEXICO	117	0.9169	107.28	1.49%	$62,972,705
NEW YORK	399	1.0914	435.47	6.05%	$255,626,409
NORTH CAROLINA	138	0.9815	135.45	1.88%	$79,508,462
NORTH DAKOTA	10	0.8587	8.59	0.12%	$5,040,741
OHIO	205	0.9617	197.16	2.74%	$115,734,364
OKLAHOMA	170	0.8588	145.99	2.03%	$85,699,061
OREGON	67	0.9947	66.65	0.93%	$39,121,663
PENNSYLVANIA	200	1.0005	200.09	2.78%	$117,456,521
RHODE ISLAND	19	0.9580	18.20	0.25%	$10,684,422
SOUTH CAROLINA	110	0.9843	108.27	1.50%	$63,557,819
SOUTH DAKOTA	17	0.8559	14.55	0.20%	$8,541,224
TENNESSEE	115	0.9799	112.69	1.57%	$66,153,082
TEXAS	1,031	0.9275	956.25	13.29%	$561,331,521
UTAH	46	0.8977	41.30	0.57%	$24,241,159
VERMONT	7	0.8604	6.02	0.08%	$3,535,445
VIRGINIA	118	0.9862	116.38	1.62%	$68,314,915
WASHINGTON	85	0.9352	79.49	1.10%	$46,661,213
WEST VIRGINIA	45	0.8937	40.21	0.56%	$23,606,744
WISCONSIN	75	0.9229	69.22	0.96%	$40,633,039
WYOMING	15	0.8758	13.14	0.18%	$7,711,638
TOTAL STATES ONLY			7,196.17	100.00%	$4,224,262,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)					
PUERTO RICO				91.60%	$9,835,550
GUAM				3.50%	$375,813
VIRGIN ISLANDS				2.60%	$279,175
AMERICAN SAMOA				1.20%	$128,850
N. MARIANA ISLANDS				1.10%	$118,113
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.00%	$10,737,500
TOTAL STATES AND COMONWEALTHS AND TERRITORIES					$4,235,000,000

FOOTNOTES

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,224,262,500; determined as the fiscal year appropriation ($4,295,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,737,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA

(2) Total amount available for allotment to the Commonwealths and Territories is $10,737,500; determined as .25 percent of the fiscal year appropriation ($4,295,000,000)

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act

STATE CHILDREN'S HEALTH INSURANCE PROGRAM FINAL ALLOTMENTS FOR FISCAL YEAR:					1999
A	B	C	D	E	F
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PERCENT SHARE OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	154	0.9510	146.46	2.04%	$85,569,176
ALASKA	11	1.0669	11.74	0.16%	$6,856,760
ARIZONA	190	1.0472	198.97	2.76%	$116,246,196
ARKANSAS	92	0.8871	81.61	1.13%	$47,681,702
CALIFORNIA	1,281	1.1365	1,455.92	20.23%	$850,608,561
COLORADO	72	0.9888	71.19	0.99%	$41,593,182
CONNECTICUT	53	1.1237	59.55	0.83%	$34,793,973
DELAWARE	13	1.0553	13.72	0.19%	$8,015,429
DISTRICT OF COLUMBIA	16	1.2857	20.57	0.29%	$12,018,971
FLORIDA	444	1.0368	460.32	6.40%	$268,938,576
GEORGIA	214	0.9923	212.36	2.95%	$124,071,402
HAWAII	13	1.1722	15.24	0.21%	$8,903,057
IDAHO	31	0.8726	27.05	0.38%	$15,804,712
ILLINOIS	211	0.9892	208.73	2.90%	$121,949,905
INDIANA	131	0.9169	120.12	1.67%	$70,179,422
IOWA	67	0.8253	55.30	0.77%	$32,307,161
KANSAS	60	0.8704	52.22	0.73%	$30,511,738
KENTUCKY	93	0.9146	85.06	1.18%	$49,696,709
LOUISIANA	194	0.8934	173.31	2.41%	$101,256,366
MAINE	24	0.8863	21.27	0.30%	$12,428,004
MARYLAND	100	1.0498	104.98	1.46%	$61,336,309
MASSACHUSETTS	69	1.0576	72.97	1.01%	$42,633,928
MICHIGAN	156	1.0001	156.02	2.17%	$91,152,976
MINNESOTA	50	0.9675	48.37	0.67%	$28,261,873
MISSISSIPPI	110	0.8675	95.43	1.33%	$55,752,550
MISSOURI	97	0.9075	88.03	1.22%	$51,429,086
MONTANA	24	0.8333	20.00	0.28%	$11,684,948
NEBRASKA	30	0.8440	25.32	0.35%	$14,792,733
NEVADA	43	1.2046	51.80	0.72%	$30,263,463
NEW HAMPSHIRE	20	0.9760	19.52	0.27%	$11,404,289
NEW JERSEY	134	1.1241	150.62	2.09%	$88,000,326
NEW MEXICO	117	0.9169	107.28	1.49%	$62,675,303
NEW YORK	399	1.0914	435.47	6.05%	$254,419,158
NORTH CAROLINA	138	0.9815	135.45	1.88%	$79,132,966
NORTH DAKOTA	10	0.8587	8.59	0.12%	$5,016,935
OHIO	205	0.9617	197.16	2.74%	$115,187,783
OKLAHOMA	170	0.8588	145.99	2.03%	$85,294,328
OREGON	67	0.9947	66.65	0.93%	$38,936,902
PENNSYLVANIA	200	1.0005	200.09	2.78%	$116,901,807
RHODE ISLAND	19	0.9580	18.20	0.25%	$10,633,962
SOUTH CAROLINA	110	0.9843	108.27	1.50%	$63,257,653
SOUTH DAKOTA	17	0.8559	14.55	0.20%	$8,500,886
TENNESSEE	115	0.9799	112.69	1.57%	$65,840,660
TEXAS	1,031	0.9275	956.25	13.29%	$558,680,510
UTAH	46	0.8977	41.30	0.57%	$24,126,675
VERMONT	7	0.8604	6.02	0.08%	$3,518,748
VIRGINIA	118	0.9862	116.38	1.62%	$67,992,282
WASHINGTON	85	0.9352	79.49	1.10%	$46,440,845
WEST VIRGINIA	45	0.8937	40.21	0.56%	$23,495,256
WISCONSIN	75	0.9229	69.22	0.96%	$40,441,141
WYOMING	15	0.8758	13.14	0.18%	$7,675,218
TOTAL STATES ONLY			7,196.17	100.00%	$4,204,312,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)					
PUERTO RICO				91.60%	$39,101,750
GUAM				3.50%	$1,494,063
VIRGIN ISLANDS				2.60%	$1,109,875
AMERICAN SAMOA				1.20%	$512,250
N. MARIANA ISLANDS				1.10%	$469,563
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.00%	$42,687,500
TOTAL STATES AND COMONWEALTHS AND TERRITORIES					$4,247,000,000

FOOTNOTES

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the fiscal year appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA

(2) Total amount available for allotment to the Commonwealths and Territories is $42,687,500; determined as $10,687,500 (.25 percent of $4,275,000,000, the fiscal year appropriation) plus $32,000,000

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act

BILLING CODE 4120–01–C

III. Impact Statement

HCFA has examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. This notice will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

Under Executive Order 12612, Federalism, we have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities. Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage.

We believe this notice has an overall positive impact by informing States, Commonwealths, and Territories of the extent to which they are permitted to expend funds under their State child health plans using their FYs 1998 and 1999 allotments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 22, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing, Administration.

Dated: March 27, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–12880 Filed 5–23–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2067–N]

RIN 0938–AJ94

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2000 under title XXI of the Social Security Act (the Act).

Established by section 4901 of the Balanced Budget Act (BBA) of 1997 (Public Law 105–33), title XXI of the Act authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under a new State Children's Health Insurance Program (SCHIP). States may implement SCHIP through a separate State program under title XXI, an expansion of a State Medicaid program under title XIX, or a combination of both. Recent legislation, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted November 29, 1999), amended title XXI of the Act in part by modifying the SCHIP allotment formula effective with the FY 2000 allotments. The FY 2000 allotments contained in this notice were determined under the new SCHIP allotment formula.

ADDRESSES: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This Federal Register document is also available from the Federal Register online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for FY 2000 under title XXI of the Social Security Act (the Act). In prior years, we published ''reserved'' allotments at the beginning of the fiscal year and then ''final'' allotments at some later time, because it was not certain at the beginning of the fiscal year that every State, the District of Columbia, and every U.S. Territory and Commonwealth would qualify for an allotment. As we explain below, each State, the District of Columbia, and each U.S. Territory and Commonwealth has now qualified for an allotment by having an approved State child health plan for the fiscal year. Therefore, publication of ''reserved'' allotments is not necessary.

Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for three fiscal years, including the year for which the final allotment was provided. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments

available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan. The allotment formula outlined in title XXI has been modified with the enactment of Public Law 106–113 on November 29, 1999, as described under section II of this notice.

Section 2104(b) of the Act indicates that ''the Secretary shall allot to each State * * * with a State child health plan approved under this title.'' This language requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths had approved plans prior to the end of FY 1999.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths

This notice specifies in the Table under section III, the final FY 2000 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for child health assistance expenditures under approved State child health plans. As discussed below, the FY 2000 final allotments have been calculated to reflect the way title XXI, as amended by the new Public Law 106–113, prescribes the process for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth. As a result of the recent changes to the allotment formula, the calculation of the allotments for FY 2000 and subsequent fiscal years differs from the way the FY 1998 and FY 1999 allotments were calculated for the first two years of the program.

We have applied the statutory formula specified in section 2104(b) of the Act, as modified by section 701 of the BBRA of 1999, to calculate the final allotments for FY 2000, as discussed below. The recent legislative changes will reduce the variability of individual State allotments from year to year and over a number of years. The new formula results in more stable federal allotments, which may permit States to more effectively plan and budget their State programs.

Section 2104(a) of title XXI provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4.295 billion for FY 1998; $4.275 billion for each fiscal year FY 1999 through FY 2001; $3.150 billion for each FY 2002 through 2004; $4.050 billion for each FY 2005 through 2006 and $5 billion for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 702 of the BBRA of 1999, provides for additional funds available for allotment only to the U.S. Territories and Commonwealths for fiscal years 2000 to 2007. Under this new provision, an additional $34.2 million is made available for allotment to the U.S. Territories and Commonwealths in fiscal years 2000 and 2001; $25.2 million in fiscal years 2002 through 2004; $32.4 million for fiscal years 2005 and 2006; and $40 million for fiscal year 2007. Therefore, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2000 is $44,887,500 (that is, $34,200,000 plus $10,687,500 (.25 percent of the FY 2000 appropriation of $4,275,000,000)).

Furthermore, under sections 4921 and 4922 of Public Law 105–33, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 to Public Health Service for a special diabetes research program for children with Type I diabetes, and $30 million for special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2000 was determined in accordance with the following formula:

$AT = S_{2104(a)} — T_{2104(c)} — D_{4921} — D_{4922}$

AT=Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$=Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2000, this is $4,275,000,000.

$T_{2104(c)}$=Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2000, this is: .0025 x $4,275,000,000=$10,687,500

D_{4921}=Amount of grant for research regarding Type I Diabetes under section 4921 of the Balanced Budget Act of 1997. This is $30,000,000 for each of the fiscal years 1998 through 2002.

D_{4922}=Amount of grant for diabetes programs for Indians under section 4922 of the BBA. This is $30,000,000 for each of the fiscal years 1998 through 2002. Therefore, for FY 2000 the total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500. This was determined as follows:

$AT($4,204,312,500) = $S_{2104(a)}$ ($4,275,000,000)—$T_{2104(c)}$ ($10,687,500)—$D_{4921}$ ($30,000,000)—$_{4922}$($30,000,000)

For purposes of the following discussion, the term ''State,'' as defined in section 2104(b)(1)(D)(ii) of the Act, ''means one of the 50 States or the District of Columbia.''

Public Law 106–113 amended title XXI such that, beginning with FY 2000, the determination of the Number of Children for a fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census before the beginning of the calendar year in which the fiscal year begins. Similarly, the determination of the State Cost Factor is based on the Annual Average Wages Per Employee in the health services industry, which is determined by the most recent three years of such wage data reported by the Bureau of Labor Statistics of the Department of Labor prior to the beginning of the calendar year in which the fiscal year begins.

Therefore, for FY 2000 and subsequent fiscal years, we will use the most recent official data from the Bureau of the Census and Bureau of Labor Statistics, respectively, available prior to January 1 of the calendar year in which the fiscal year begins. Specifically, in determining the FY 2000 allotments in this notice, we utilized the most recent data available from the Bureau of the Census and the Bureau of Labor Statistics prior to January 1, 1999, because FY 2000 begins on October 1, 1999 in calendar year 1999. This is a change from the first two years of the program, in which the Number of Children and the State Cost Factor were based on the most recent data available before the beginning of the fiscal year.

Number of Children

Section 701(a)(1) of the BBRA of 1999 accelerated the phase-in of the blend of the numbers of uninsured low-income children and low-income children

specified in the statute, which are used in determining the Number of Children factor. Prior to this legislative change, the Number of Children for FYs 1998 through 2000 would have been based on the total number of low-income uninsured children in the State. As a result of the legislative change, the total number of uninsured low-income children in the State is only used for determining the Number of Children factor for FYs 1998 and 1999. Under the legislation, for FY 2000 the Number of Children is now calculated as the sum of 75 percent of the number of low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. For FY 2001 and succeeding years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State.

The Number of Children factor for each State is developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between HCFA and the Bureau of the Census, each fiscal year HCFA obtains the Number of Children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, as amended by section 701(a)(3) of the BBRA of 1999, in determining the FY 2000 final allotments, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census before the beginning of the 1999 calendar year. In particular, through December 31, 1998, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 1996, 1997, and 1998.

State Cost Factor

The State Cost Factor is based on annual average wages in the health services industry in the State. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. Under section 2104(b)(3)(B) of the Act, as amended by section 701(a)(4) of the BBRA of 1999, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State as reported, determined, available as final, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor for each of the most recent three years available before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000 begins on October 1, 1999, that is, FY 2000 begins during calendar year 1999. Therefore, the State cost factor for FY 2000 would be based on the most recent three years of BLS data available as final before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins), that is, it would be based on the BLS data available as final through December 31, 1998. In accordance with these requirements, we used the final State Cost Factor data available from BLS for 1994, 1995, and 1996 in calculating the FY 2000 final allotments.

The State Cost Factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the National average annual wages in the health care industry. In order for the National average to appropriately reflect the State-specific suppressed data, HCFA calculated the National average wages directly from the State-specific data provided by BLS. This was necessary because, due to the Privacy Act, BLS is required to suppress certain State-specific data in providing HCFA with the State-specific average wages per health services industry employee. As part of a continuing formal process between HCFA and the BLS, each fiscal year HCFA obtains these wage data officially from the BLS.

Under section 2104(b)(4) of the Act, as amended by section 701(a)(2) of the BBRA of 1999, each State and the District of Columbia is allotted a ''proportion'' of the total amount available nationally for allotment to the States. The term ''proportion'' is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times {}_{AT}$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

${}_{AT}$ = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2000, this is $4,204,312,500.

In accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a ''product'' for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceilings

Under the second step, which was added by section 701(a)(2) of the BBRA of 1999, the preadjusted proportions are subject to the application of proportion floors, ceilings and a reconciliation process, as appropriate. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. For FY 2000, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over

the life of the program. Note, the floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Territories and Commonwealths.

As determined under the first step, which is applied prior to the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly equal one. In that case, the statute requires that the proportions will need to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the floor) to a greater degree than the proportions of other States were lowered (due to the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the new statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the States' proportions must be increased in a ''pro rata'' manner so that the sum of the proportions again equals one. It is also possible, although unlikely, that the sum of the proportions (after the applications of the floors and ceilings) will be exactly one, and therefore, the proportions would require no further adjustment.

Determination of Preadjusted Proportions

Following is an explanation of how HCFA applied the two State-related factors specified in the statute to determine the States' preadjusted proportions for FY 2000. The term ''preadjusted,'' as used here, refers to the States' proportions prior to the application of the floors and ceiling and adjustments, as specified in the BBRA of 1999. The determination of each State and the District of Columbia's preadjusted proportion for FY 2000 and subsequent fiscal years is in accordance with the following formula:

$PP_i = (C_i x SCF_i)/\Sigma(C_i x SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (Section 2104(b)(1)(A)(I)) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the Current Population Survey of the Bureau of the Census, and for FY 2000 and subsequent fiscal years, officially available before the beginning of the calendar year in which the fiscal year begins. (Section 2104(b)(2)(B) of the Act).

For fiscal year 2000, the number of children is equal to the sum of 75 percent of the number of low-income uninsured children in the State for the fiscal year and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2001 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (Section 2104(b)(2)(A) of the Act).

SCF_i=*State cost factor for a State* (Section 2104(b)(1)(A)(ii)of the Act). For a fiscal year, this is equal to:

$.15+.85 \times (W_i/W_N)$

W_i=The annual average wages per employee for a State for such year (Section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (Section 2104(b)(3)(A)(ii)(II) of the Act).

The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent three years, and for FY 2000 and subsequent fiscal years, finally available before the beginning of the calendar year in which the fiscal year begins. (Section 2104(b)(3)(B) of the Act).

$\Sigma(C_i x SCF_i)$ =The sum of the products of (C_i x SCF_i) for each State (Section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in Public Law 106–113 and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of three years, the fiscal year for which the State child health plan is approved and two years following. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the three-year period to States that have fully expended their allotments.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2000

Key to Table

Column/Description

Column A = Name of State, Commonwealth, or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the Current population survey of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2000 allotments were based on the 1996, 1997, and 1998 March supplements to the Current Population Survey. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual March Current Population Surveys on these topics.

For FY 2000, the Number of Children is equal to the sum of 75 percent of the number of low-income uninsured children in the State and 25 percent of the number of low-income children in the State. For FY 2001 and succeeding years, the Number of Children is equal to the sum of 50 percent of the number

of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C=State Cost Factor. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such final wage data for each State as reported, determined, and provided to HCFA by the BLS in the Department of Labor for each of the most recent three years before the beginning of the calendar year in which the fiscal year begins. The FY 2000 allotments were based on final BLS wage data for 1994, 1995, and 1996.

Column D=Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E=Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F=Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the amended statute are: (1) A floor of $2,000,000 divided by the total of the amount available; (2) an annual floor of 90 percent of (or 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (or 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (or 45 percent above) the FY 1999 allotment proportion.

Column G=Allotment. This is the State Children's Health Insurance Program allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealth, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

BILLING CODE 4120–01–P

STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR: 2000						
A	B	C	D	E	F	G
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PROPORTION OF TOTAL (3)	ADJUSTED PROPORTION OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	235	0.9600	225.61	1.67%	1.83%	$77,012,259
ALASKA	30	1.0500	31.24	0.23%	0.18%	$7,730,025
ARIZONA	398	1.0521	418.73	3.10%	3.10%	$130,213,077
ARKANSAS	207	0.8891	184.28	1.36%	1.28%	$53,754,360
CALIFORNIA	2,064	1.1227	2,317.16	17.14%	18.21%	$765,547,705
COLORADO	152	0.9947	151.19	1.12%	1.12%	$46,890,416
CONNECTICUT	116	1.1170	129.85	0.96%	0.93%	$39,225,273
DELAWARE	33	1.0655	35.43	0.26%	0.21%	$9,036,260
DISTRICT OF COLUMBIA	26	1.3185	34.61	0.26%	0.26%	$10,817,074
FLORIDA	738	1.0331	762.66	5.64%	5.76%	$242,044,718
GEORGIA	431	0.9883	425.70	3.15%	3.15%	$132,381,325
HAWAII	43	1.1724	50.71	0.38%	0.24%	$10,036,935
IDAHO	71	0.8815	62.15	0.46%	0.42%	$17,817,572
ILLINOIS	496	0.9924	491.75	3.64%	3.27%	$137,481,231
INDIANA	214	0.9191	196.22	1.45%	1.50%	$63,161,480
IOWA	124	0.8381	104.13	0.77%	0.77%	$32,382,884
KANSAS	112	0.8686	97.50	0.72%	0.72%	$30,320,974
KENTUCKY	204	0.9197	187.39	1.39%	1.33%	$56,025,995
LOUISIANA	301	0.8905	268.25	1.98%	2.17%	$91,130,730
MAINE	50	0.8945	44.95	0.33%	0.33%	$13,978,005
MARYLAND	174	1.0495	182.88	1.35%	1.35%	$56,869,698
MASSACHUSETTS	188	1.0527	198.18	1.47%	1.14%	$48,063,710
MICHIGAN	351	1.0059	353.31	2.61%	2.44%	$102,762,059
MINNESOTA	155	0.9771	151.45	1.12%	0.76%	$31,861,256
MISSISSIPPI	213	0.8772	186.63	1.38%	1.38%	$58,036,226
MISSOURI	219	0.9155	200.26	1.48%	1.38%	$57,979,004
MONTANA	58	0.8357	48.26	0.36%	0.31%	$13,173,122
NEBRASKA	63	0.8495	53.30	0.39%	0.39%	$16,576,269
NEVADA	83	1.1899	98.16	0.73%	0.73%	$30,526,393
NEW HAMPSHIRE	33	0.9788	32.55	0.24%	0.24%	$10,263,860
NEW JERSEY	277	1.1244	311.47	2.30%	2.30%	$96,858,666
NEW MEXICO	177	0.9225	162.83	1.20%	1.34%	$56,407,772
NEW YORK	923	1.0904	1,005.88	7.44%	6.82%	$286,821,535
NORTH CAROLINA	340	0.9877	335.34	2.48%	2.12%	$89,211,202
NORTH DAKOTA	28	0.8647	23.78	0.18%	0.13%	$5,655,883
OHIO	445	0.9620	427.61	3.16%	3.09%	$129,857,897
OKLAHOMA	219	0.8553	187.53	1.39%	1.83%	$76,764,895
OREGON	148	1.0027	148.41	1.10%	1.04%	$43,895,837
PENNSYLVANIA	416	0.9962	414.69	3.07%	3.07%	$128,956,235
RHODE ISLAND	31	0.9684	29.78	0.22%	0.23%	$9,570,566
SOUTH CAROLINA	231	0.9955	229.72	1.70%	1.70%	$71,314,037
SOUTH DAKOTA	30	0.8668	25.57	0.19%	0.19%	$7,951,348
TENNESSEE	318	0.9888	314.43	2.33%	1.77%	$74,226,011
TEXAS	1,509	0.9263	1,397.77	10.34%	11.96%	$502,812,459
UTAH	106	0.8997	95.59	0.71%	0.65%	$27,199,406
VERMONT	19	0.8625	16.60	0.12%	0.09%	$3,966,889
VIRGINIA	240	0.9879	236.61	1.75%	1.75%	$73,580,365
WASHINGTON	211	0.9419	198.51	1.47%	1.25%	$52,355,470
WEST VIRGINIA	69	0.8922	61.34	0.45%	0.50%	$21,145,730
WISCONSIN	160	0.9338	149.17	1.10%	1.08%	$45,591,653
WYOMING	26	0.8743	22.73	0.17%	0.17%	$7,068,749
TOTAL STATES ONLY			13,519.83	100.00%	100.00%	$4,204,312,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)						
PUERTO RICO				91.60%		$41,116,950
GUAM				3.50%		$1,571,063
VIRGIN ISLANDS				2.60%		$1,167,075
AMERICAN SAMOA				1.20%		$538,650
N. MARIANA ISLANDS				1.10%		$493,763
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.00%		$44,887,500
TOTAL STATES AND COMONWEALTHS AND TERRITORIES						$4,249,200,000

FOOTNOTES

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the fiscal year appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA

(2) Total amount available for allotment to the Commonwealths and Territories is $10,687,500 (determined as .25 percent of $4,275,000,000, the fiscal year appropriation) plus $34,200,000 as specified in section 2104(c)(4)(B) of the Act

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act

BILLING CODE 4120–01–C

IV. Impact Statement

HCFA has examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety,

other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. This notice will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

Under Executive Order 12612, Federalism, we have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities. Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage.

We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2000 allotments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: February 7, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing, Administration.

Dated: March 20, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–12881 Filed 5–23–00; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Wednesday,
May 24, 2000

Part III

Federal Trade Commission

16 CFR Part 313

Privacy of Consumer Financial Information; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 313

Privacy of Consumer Financial Information

AGENCY: Federal Trade Commission.

ACTION: Final Rule.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is publishing a final privacy rule, as required by section 504(a) of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (the ''G-L-B Act'' or ''Act''), with respect to financial institutions and other persons under the Commission's jurisdiction, as set forth in section 505(a)(7) of the Act. Section 504 of the Act requires the Commission and other federal regulatory agencies to issue regulations as may be necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. Pursuant to section 503 of the G-L-B Act, a financial institution must provide its customers with a notice of its privacy policies and practices. Section 502 prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties unless the institution satisfies various disclosure and opt-out requirements and the consumer has not elected to opt out of the disclosure. This final rule implements the requirements outlined above.

EFFECTIVE DATE: This rule is effective November 13, 2000. Full compliance is required by July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Kellie A. Cosgrove or Clarke Brinckerhoff, Attorneys, Division of Financial Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION:

Section A. Background

On November 12, 1999, President Clinton signed the G-L-B Act (Public Law 106–102) into law. Subtitle A of Title V of the Act, captioned Disclosure of Nonpublic Personal Information, limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. The Commission notes that there are other laws that may impose limitations on disclosures of nonpublic personal information in addition to those imposed by the G-L-B Act and this rule. For instance, the Fair Credit Reporting Act imposes conditions on the sharing of application information and credit report information between affiliates and nonaffiliated third parties.[1] Title V also requires the Commission, along with the Federal banking agencies [2] and other Federal regulatory authorities,[3] after consulting with representatives of State insurance authorities designated by the National Association of Insurance Commissioners (NAIC), to prescribe such regulations as may be necessary to carry out the purposes of the provisions in Title V, Subtitle A, that govern disclosure of nonpublic personal information. The Federal agencies are sometimes referred to collectively in this document as the ''Agencies'' (or ''other Agencies'' when excluding the Commission).

The Agencies are all issuing final rules to implement Subtitle A that are consistent and comparable to the extent possible, as is required by the statute.

Section B. Overview of Comments Received

On March 1, 2000, the Commission published a notice of proposed rulemaking (the proposal or proposed rule) in the **Federal Register** (65 FR 11174). The other Agencies published their proposed rules on different dates.[4] The Commission received a total of 640 comments, and the other Agencies collectively received a total of 8,337 comments in response to the various proposed rules. Many commenters sent the same letter to multiple Agencies. Many of the comments were from individuals, virtually all of whom encouraged the Agencies to provide greater protection of individuals' financial privacy. Many individuals noted their concerns generally about the loss of privacy and the receipt of unwanted solicitations by marketers. A large number of individuals also requested the Agencies to support legislation that the commenters believe would provide additional protections.

The Agencies also received several letters from members of Congress. In two letters signed by several members of the House of Representatives, the Agencies were encouraged to exercise their rulemaking authority to provide greater protections than provided in the Act. Other Representatives requested, in separate letters, that some other Agencies (a) create a limited exception to the prohibition against the sharing of account numbers for marketing purposes and (b) ensure that social security numbers are considered ''nonpublic personal information.''

The NAIC submitted a comment on behalf of the State insurance authorities that generally supported the Agencies' proposed rule. The NAIC also proposed various measures to provide greater protections for consumers, such as specifying more convenient means to exercise the right to opt out of the disclosure of information. The NAIC further advised the Agencies to clarify the boundary of Federal and State jurisdiction over privacy regulations and ensure that the financial privacy rules under the Act are compatible with the privacy rules relating to medical information that are to be issued by the Secretary of the Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPPA) of 1996.[5]

Other comments were received from consumer groups and others advocating that the Agencies extend privacy protections in a number of ways, such as by requiring (a) financial institutions to provide consumers with access to their information maintained by the institutions and the opportunity to correct errors, (b) more detailed disclosures of the information collected and disclosed, and (c) disclosures of a financial institution's privacy policies and practices earlier in the process of establishing a customer relationship. A letter signed by 33 State Attorneys General urged some other Agencies to add certain consumer protections to the disclosure requirements and to the

[1] The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq*, provides no limitation on communication by an entity solely of its own ''transactions or experiences'' with the consumer (*e.g.*, the individual's account history). However, it limits the reporting of information obtained from other sources, such as consumer application information or credit report information. An institution may normally share such data with its affiliates only if it has complied with the notice and opt-out procedures set forth in FCRA § 603(d)(2)(A)(iii), which are very similar to those set forth in Section 502(b)(1) of the Act. Sharing such data with nonaffiliates may be effectively prohibited by the FCRA, because the institution likely would become a consumer reporting agency subject to its restrictions on reporting of information to third parties.

[2] Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and Secretary of the Treasury.

[3] National Credit Union Administration (NCUA) and Securities and Exchange Commission (SEC).

[4] Those proposed rules, which were consistent and comparable with the proposals published by the Commission, appeared in the **Federal Register** at 65 FR 8770 (Feb. 22, 2000) (OCC, FRB, FDIC, and OTS jointly), 65 FR 10988 (Mar. 1, 2000) (NCUA), and 65 FR 12354 (Mar. 8, 2000) (SEC).

[5] These proposed regulations were published for comment at 64 FR 59918 (Nov. 3, 1999).

provision permitting financial institutions to enter into joint marketing agreements.

Most of the remaining comments were from businesses concerned about the Act, and their representatives. This included not only creditors of various types, but also representatives of the health care industry, retail merchants, insurance companies, securities firms, private investigators, debt collection agencies, consumer reporting agencies, institutions of higher education, tax professionals, and others. These commenters offered a large number of suggested changes, with the most commonly advanced suggestions including: an extension of the effective date of the rule; an amendment to the definition of ''nonpublic personal information'' to focus more narrowly on ''financial'' information; a streamlining of information required in the initial and annual disclosures; a clarification of how one or more of the statutory exceptions operate; an exclusion from, or clarification of, the definitions of ''consumer'' and ''customer'' in various contexts; and the addition of flexibility to provide initial notices at some point other than ''prior to'' the time a customer relationship is established.

The Commission has made some modifications to its proposed rule in light of the comments received. These comments, and the Commission's responses thereto, are discussed in the following section-by-section analysis. Following the section-by-section analysis, the Commission has provided guidance for certain institutions in order to provide additional direction on how these institutions may comply with the rule and avoid unnecessary burden.

Section C. Section-by-Section Analysis

As an initial matter, the Commission notes that the final rule, unlike the proposal, presents the various sections in subparts that consist of related sections. This change was made to group related concepts together and thereby make the rule easier to follow. A derivation table is included following this preamble to assist readers in locating provisions as set out in the Commission proposal. The Commission has also added an Appendix to the final rule, setting out example disclosure clauses for financial institutions to consider.

Section 313.1 Purpose and Scope

Purpose. Paragraph (a) of this section states that the rule is intended to require a financial institution to provide notice to customers about its privacy policies and practices; to describe the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and to provide a method for consumers to prevent a financial institution from disclosing that information to certain nonaffiliated third parties by ''opting out'' of that disclosure, subject to various exceptions as stated in the rule. No significant comments addressed this provision, and the Commission made no substantive change to this section.

Scope. Paragraph (b) sets out the scope of the rule, and tracks the enforcement role assigned to the Commission by section 505(a)(7) of the G-L-B Act. It states that the rule applies only to information about individuals who obtain a financial product or service from a financial institution to be used for personal, family, or household purposes. The principal type of entity subject to the rule is a ''financial institution,'' a term section 509(3) of the G-L-B Act defines very broadly to mean ''any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956'' (12 U.S.C. 1843(k)). Those ''financial activities'' include not only a number of traditional financial activities specified in section 4(k) itself,[6] but also those activities that the Federal Reserve Board has found to be either closely related to banking,[7] or usual in connection with the transaction of banking or other financial operations abroad,[8] by regulation (or order or interpretation) ''in effect on the date of the enactment of the Gramm-Leach-Bliley Act.'' [9] Section 313.1(b) also lists some examples of ''financial institutions'' subject to Commission jurisdiction under the Act. Finally, this part notes that the Commission is also authorized to enforce the Act against ''other persons'' who are not financial institutions, but receive protected information from a financial institution and are subject to section 502(c) of the G-L-B Act (''Limits on Reuse of Information''), which imposes restrictions on recipients of such information as set forth in 16 CFR 313.11, *infra*.

Many industry commenters suggested revising the ''financial institution'' definition set forth in § 313.3(k) to narrow the scope to only those businesses that engage in traditional financial activities, arguing that Congress did not intend to cover businesses that conducted no such activities. On the other side, consumer commenters vigorously defended the broad scope, contending that the need to protect personal financial data extends beyond traditional financial institutions and that Congress intended to regulate a wide range of businesses that provide ''financial'' services to consumers when it enacted this statute. The G-L-B Act clearly covers more than parties in the credit, insurance, or securities industries; rather, an entity is a ''financial institution'' if it engages in any activity that the Board has determined to be a ''financial activity.''

[6] Section 4(k)(4)(A–E) states ''the following activities shall be considered to be financial in nature: (A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities. (B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State. (C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940). (D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly. (E) Underwriting, dealing in, or making a market in securities.''

[7] Section 4(k)(4)(F). The Board's list of such activities is found in 12 CFR 225.28 and 12 CFR 225.86(a). The latter subsection was added as an interim rule published by the Board in the **Federal Register** upon enactment of the G-L-B Act (65 FR 14433; Mar. 14, 2000), subject to revision after a public comment period ending on May 12, 2000. The activities listed in 12 CFR 225.28 include in certain circumstances: brokering or servicing loans; leasing real or personal property (or acting as agent, broker, or advisor in such leasing) without operating, maintaining or repairing the property; appraising real or personal property; check guaranty, collection agency, credit bureau, and real estate settlement services; providing financial or investment advisory activities including tax planning, tax preparation, and instruction on individual financial management; management consulting and counseling activities (including providing financial career counseling); courier services for banking instruments; printing and selling checks and related documents; community development or advisory activities; selling money orders, savings bonds, or traveler's checks; and providing financial data processing and transmission services, facilities (including hardware, software, documentation, or operating personnel), data bases, advice, or access to these by technological means.

[8] Section 4(k)(4)(G). The scope of the Act is not limited to activities abroad, because the text of Section 4(k)(4)(G) is ''Engaging, *in the United States*, in any Section 4(k)(4)(G) activity that (i) a bank holding company may engage in outside of the United States; and (ii) the Board has determined to be usual in connection with the transaction of banking and financial operations abroad.'' (Emphasis added.) The Board has provided a list of such activities in 12 CFR 211.5(d) and 12 CFR 225.86(b). The latter subsection was added as an interim rule published by the Board in the **Federal Register** upon enactment of the G-L-B Act (65 FR 14433; Mar. 14, 2000), subject to revision following a public comment period ending on May 12, 2000. The activities listed in 12 CFR 211.5(d) include leasing real or personal property (or acting as agent, broker, or advisor in such leasing) where the lease is functionally equivalent to an extension of credit; acting as fiduciary; providing investment, financial, or economic advisory services; and operating a travel agency in connection with financial services.

[9] Section 4(k)(4)(G) uses ''*day before the* date of'' rather than ''date of'' in the quoted phrase.

After a careful review of the comments received, the Commission finds no sound rationale for fundamentally revising the scope of the rule. Therefore, the Commission continues to interpret the act as written and has made no broad change to 16 CFR 313.1(b) in that regard.[10] However, as the Commission noted when it proposed this rule and repeats hereafter, some businesses that are technically ''financial institutions'' will have no disclosure obligations under the Act.[11] Furthermore, as is evident from the discussion of the term ''customer relationship'' that is defined in 16 CFR 313.3(i), many others will have only limited duties because they will not establish such relationships or they will be of very short duration.

Several commenters requested that the Commission clarify how its rule applies to insurance companies. The Commission notes that section 505 of G-L-B Act, which sets out the enforcement authority of the Agencies, explicitly commits the enforcement jurisdiction over ''persons engaged in providing insurance'' to state insurance authorities, thus excluding them from the Commission's authority (and, by operation of section 504(a)(1) of the G-L-B Act, from the Commission's rulemaking authority).

Several other commenters asked that the final rule state that certain transactions that are exempt from the coverage of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) and Regulation Z (Reg. Z, 12 CFR part 226) also be treated as beyond the scope of the privacy rule. TILA and Reg. Z, which impose disclosure requirements on credit extended to consumers under certain circumstances, exempt several transactions, including those involving business, commercial, or agricultural credit. 15 U.S.C. 1603(1); 12 CFR 226.3(a). The Commission agrees that transactions that fit within the business, commercial, and agricultural exemptions from TILA and Reg. Z for these types of credit also would fall outside the scope of the privacy rule, and has amended § 313.1(b) accordingly.[12]

Several comments suggested that the rule should not apply to entities that must comply with regulations issued by the HHS that implement the HIPAA. Given the broad definition of ''financial institution'' under the G-L-B Act, certain entities are subject to these privacy rules as well as rules promulgated under HIPAA regarding appropriate handling of protected health information. Accordingly, financial institutions may be covered both by this privacy rule and by the regulations promulgated by HHS under the authority of sections 262 and 264 of HIPAA once those regulations are finalized. Based on the proposed HIPAA rules, it appears likely that there will be areas of overlap between HIPAA and financial privacy rules. For instance, under the proposed HIPAA regulations, consumers must provide affirmative authorization before a covered institution may disclose medical information in certain instances, whereas under the financial privacy rules, institutions need only provide consumers with the opportunity to opt out of disclosures. In this case, the Agencies anticipate that compliance with the affirmative authorization requirement, consistent with the procedures required under HIPAA, would satisfy the opt out requirement under the financial privacy rules. After HHS publishes its final rules, the Commission and other Agencies will consult with HHS to avoid the imposition of duplicative or inconsistent requirements.

The Commission also received several comments from colleges and universities and their representatives requesting that institutions of higher education be excluded from the definition of financial institution. The Commission disagrees with those commenters who suggested that colleges and universities are not financial institutions. Many, if not all, such institutions appear to be significantly engaged in lending funds to consumers. However, such entities are subject to the stringent privacy provisions in the Federal Educational Rights and Privacy Act (''FERPA''), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, which govern the privacy of educational records, including student financial aid records. The Commission has noted in its final rule, therefore, that institutions of higher education that are complying with FERPA to protect the privacy of their student financial aid records will be deemed to be in compliance with the Commission's rule.

Section 313.2 Rule of Construction

Proposed § 313.2 of the rule sets out a rule of construction intended to clarify the effect of the examples used in the rule. As noted in the proposal, these examples are not intended to be exhaustive; rather, they are intended to provide guidance about how the rule would apply in specific situations.

Commenters generally agreed that examples are helpful in clarifying how the rule will work in specific circumstances and suggested that the Commission should include more examples. Many commenters requested that the Commission provide examples of model disclosures. Commenters also generally agreed that it is useful to state that the list of examples is not intended to be exhaustive, and that compliance with one of the examples would be deemed compliance with the regulation. A few commenters suggested that the regulation state that a financial institution is not obligated to comply with an example but has the latitude to comply with the general rule in other ways. Others stated that the examples ought to be identical in each privacy regulation adopted by the Agencies. The Commission also received comments suggesting that the Commission defer to the expertise of other agencies when considering application of its rule to entities such as credit unions or investment advisors under its jurisdiction.

The Commission believes that more examples would be helpful and has included additional examples in appropriate places throughout the rule. The Commission has also provided sample clauses in Appendix A to the rule to aid financial institutions in their drafting of privacy notices. The sample clauses are provided to illustrate the level of detail the Commission believes is appropriate. The Commission cautions financial institutions against relying on the sample clauses without determining the relevance or appropriateness of the disclosure for their operations. The Commission has used statutory terms, such as ''nonpublic personal information'' and ''nonaffiliated third parties,'' in the sample clauses to convey generally the subject of the clauses. However, a financial institution that uses these terms must provide sufficient information to enable consumers to understand what these terms mean in the context of the institution's notices. Moreover, the Commission notes that, in providing the sample disclosures, the Commission is addressing solely the

[10] However, as discussed in the definition of ''financial institution'' in § 313.3(k), the Commission has retained its interpretation that an institution is covered only if it is ''significantly engaged'' in such activities.

[11] ''Many entities that come within the broad definition of financial institution will likely not be subject to the disclosure requirements of the rule because not all financial institutions have 'consumers' or establish 'customer relationships.' '' 65 Fed. Reg. 11174, 11177 (Mar. 1, 2000).

[12] Thus, creditors may look at how this exemption is applied under Reg. Z for guidance on the scope of covered transactions under the privacy rule. It should be noted, however, that TILA exempts several other types of transactions that would be covered under the privacy rule if they are for the purpose of an individual obtaining a financial product or service as that term is defined in the privacy regulation. *See* 15 U.S.C. 1603 (2) and (3).

level of detail required and is not attempting to provide guidance on issues such as type size, margin width, ''clear and conspicuous'' generally, and so on.

The rule does not contain a statement regarding a financial institution's ability to comply with the rule in ways other than as suggested in the examples, but does provide that the examples are not exclusive. The rule also states that compliance with the examples will constitute compliance with the rule. The Commission believes that, when read together, these provisions give financial institutions sufficient flexibility to comply with the regulation but also sufficient guidance about the use of examples.

The Commission understands that the NCUA and SEC have issued, or will issue, final rules with examples that are tailored to entities under their jurisdiction. Therefore, the Commission has stated in § 313.2 that compliance by non-federally insured credit unions with credit union examples in the NCUA rule will constitute compliance with the Commission's rule. Similarly, compliance by interstate securities broker-dealers and investment advisers that are not registered with the SEC with applicable examples in the SEC rule will constitute compliance with the Commission's rule.

Section 313.3 Definitions

a. *Affiliate.* The proposal adopted the definition of ''affiliate'' that is used in section 509(6) of the G-L-B Act. An affiliation exists when one company ''controls'' (which is defined in § 313.3(g), below), is controlled by, or is under common control with another company. The definition includes both financial institutions and entities that are not financial institutions.

The Commission received comparatively few comments in response to this definition. A few commenters requested that the final rule state that a credit union service organization will be deemed to be an affiliate of every credit union that has an interest in it. The Commission has declined to adopt this suggestion. If the relationship between a credit union and a credit union service organization satisfies the test for affiliation set out in the statute and regulation, then an affiliation exists.

In light of the comparatively few comments received and the nature of those comments, the Commission adopts the definition of ''affiliate'' as proposed.

b. *Clear and conspicuous.* Under the proposed rule, various notices must be ''clear and conspicuous.'' The proposed rule defines this term to mean that the notice must be reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The proposal did not mandate the use of any particular technique for making the notices clear and conspicuous, but provided examples of how a notice may be made clear and conspicuous. As noted in the preamble to the proposed rule, each financial institution retains the flexibility to decide for itself how best to comply with this requirement.

The Commission received a large number of comments on this proposed definition. Some commenters favored adopting the definition as proposed, with some of these advocating that the final rule add a requirement that disclosures must be on a separate piece of paper in order to ensure that they will be conspicuous. Others stated that the definition was unnecessary, given the experience financial institutions have in complying with requirements that disclosures mandated by other laws be clear and conspicuous. Several commenters made the related point that the rule proposed is inconsistent with requirements in other consumer protection regulations such as Reg. Z and the Truth in Savings regulation (Regulation DD, 12 CFR part 230), which require only that a disclosure be reasonably understandable. Many of these commenters expressed concern that the examples would invite litigation because of ambiguities inherent in terms used in the examples in the proposed rule such as ''ample line spacing,'' ''wide margins,'' and ''explanations * * * subject to different interpretations.'' A few commenters questioned how the requirement would work in a document that contains several disclosures that each must be clearly and conspicuously disclosed, while others raised questions about how a disclosure may be clear and conspicuous on a web site. These comments are addressed below.

New standard for ''clear and conspicuous'' The Commission recognizes that the proposed definition articulates the concept of ''clear and conspicuous'' in ways perhaps not familiar to some commenters. However, the Commission included the phrase ''designed to call attention to the nature and significance of the information contained'' to provide added meaning to the term ''conspicuous.'' The Commission believes that this standard, when coupled with the existing standard requiring that a disclosure be readily understandable, likely will result in notices to consumers that communicate effectively the information needed by consumers to make an informed choice about the privacy of their information, including whether to transact business with a financial institution.

The standard for clear and conspicuous adopted by the Commission in this rulemaking applies solely to disclosures required under the privacy rules. Disclosures governed by other rules requiring clear and conspicuous disclosures (such as Reg. Z) are beyond the scope of this rulemaking.

Examples of ''clear and conspicuous'' The Commission recognizes that many of the examples require judgment in their application. The Commission believes, however, that more prescriptive examples, while perhaps easier to conform to, likely would result in requirements that would be inappropriate in a given circumstance. To avoid this result, the examples provide generally applicable guidance about ways in which a financial institution may make a disclosure clear and conspicuous. The Commission notes that the examples of how to make a disclosure clear and conspicuous are not mandatory. A financial institution must decide for itself how best to comply with the general rule and may use techniques not listed in the examples. To address these concerns, the Commission has incorporated several of the commenters' suggestions for ways to make the guidance more helpful.

Combination of several ''clear and conspicuous'' notices. A document may combine several disclosures that each must be clear and conspicuous. The final rule provides an example, in § 313.3(b)(2)(ii)(E), of how a financial institution may make disclosures conspicuous, including disclosures on a combined notice. In order to avoid the potential conflicts envisioned by several commenters between two different requirements, the final rule does not mandate precise specifications for how various disclosures must be presented.

Because the Commission believes that privacy disclosures may be clear and conspicuous when contained in a document containing other disclosures, the rule does not mandate that disclosures be provided on a separate piece of paper. Such a requirement is not necessary and would significantly increase the burden on financial institutions. Moreover, it would not necessarily provide the most effective notice in all circumstances.

Disclosures on web pages. Several commenters requested guidance on how they may clearly and conspicuously

disclose privacy-related information on their Internet sites. The Commission recognizes that disclosures over the Internet present some issues that will not arise in paper-based disclosures. There may be web pages within a financial institution's website that consumers may view in a different order each time they access the site, aided by hypertext links. Depending on the customer hardware and software used to access the Internet, some web pages may require consumers to scroll down to view the entire page. To address these issues, the Commission has included a statement in the example in § 313.3(b)(2)(iii) concerning Internet disclosures informing financial institutions that they may comply with the rule if they use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice. In addition, a financial institution is to place either a notice or a conspicuous link on a page frequently accessed by consumers, such as a page on which transactions are conducted.

Given current technology, there are a range of approaches a financial institution could take to comply with the rule. For example, a financial institution could use a dialog box that pops up to provide the disclosure before a consumer provides information to the institution. Another approach would be a simple, clearly labeled graphic located near the top of the page or in close proximity to the financial institution's logo, directing the customer, through a hypertext link or hotlink, to the privacy disclosures on a separate web page.

For the reasons advanced above, the Commission has adopted the definition of ''clear and conspicuous,'' with the changes previously described and with certain other changes intended to make the definition easier to apply.

c. *Collect.* The statute requires a financial institution to include in its initial and annual notices a disclosure of the categories of nonpublic personal information that the institution collects. The proposal defined ''collect'' to mean obtaining any information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information. This definition was included to provide guidance about the information that a financial institution must include in its notices and to clarify that the obligations arise regardless of whether the financial institution obtains the information from a consumer or from some other source.

Commenters suggested that the final rule treat information that is not organized and retrievable in an automated fashion as not ''collected.'' This approach would exclude separate documents not included in a file. The Commission disagrees that information should not be deemed to be collected simply because it is not retrievable in an automated fashion. The Commission believes that the method of retrieval is irrelevant to whether information should be protected under the rule. The Commission agrees, however, that the scope of the regulation should be refined, and has changed the definition of ''collect'' by using language taken from the Privacy Act of 1974 (5 U.S.C. 552a).

Other commenters requested that the rule clarify that information that is received by a financial institution but then immediately passed along without otherwise disclosing, using, or maintaining a copy of the information is not ''collected'' as this term is used in the final rule. The Commission believes that merely receiving information without maintaining it would not be ''collecting'' the information. The final rule reflects this by stating that the information must be organized or retrievable by the financial institution. Otherwise, the definition of ''collect'' is adopted as proposed.

d. *Company.* The proposal defined ''company,'' which is used in the definition of ''affiliate,'' as any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

The Commission received no substantive comments on this proposed definition.[13] Accordingly, the Commission adopts the definition of ''company'' as proposed.

e. *Consumer.* The G-L-B Act distinguishes ''consumers'' from ''customers'' for purposes of the notice requirements imposed by the Act. A financial institution is required to give a ''consumer'' the notices required under Title V only if the institution intends to disclose nonpublic personal information about the consumer to a nonaffiliated third party for purposes other than as permitted by section 502(e) of the statute (as implemented by §§ 313.14 and 313.15). By contrast, a financial institution must give all ''customers'' a notice of the institution's privacy policy at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship.

The proposed rule defined ''consumer'' to mean an individual (and his or her legal representative) who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes. Because ''financial product or service'' is defined to include the evaluation by a financial institution of an application to obtain a financial product or service (*see* further discussion of this point, below), a person becomes a consumer even if the application is denied or withdrawn. An individual also would be deemed to be a consumer (as well as a customer) of a financial institution that purchases the individual's account from some other institution.

The Commission received a large number of comments on this proposed definition, raising questions about how the definition would apply in a variety of situations. These comments are addressed below.

Distinction between ''consumer'' and ''customer.'' While many agreed with the distinction drawn in the proposal between ''consumer'' and ''customer,'' a few commenters suggested that no distinction between ''consumer'' and ''customer'' should be made, given that, in these commenters'' views, the statute appears to use the terms interchangeably. The Commission believes, however, that the distinction was deliberate and that the rule should implement it accordingly. A plain reading of the statute supports the conclusion that Congress created one set of protections for anyone who obtains a financial product or service (*i.e.,* who receives a financial institution's privacy policy and opt out notice only if a financial institution intends to disclose nonpublic personal information to nonaffiliated third parties), and an additional set of protections for anyone who establishes a relationship of a more lasting nature than an isolated transaction with a financial institution (*i.e.,* who gets a notice of the institution's privacy policy at the time of establishing a customer relationship, and annual notices as appropriate thereafter). Because the statute tailors the notice requirements to the type of relationship an individual has with a financial institution, that distinction is preserved in the rule.

Applicants as consumers. Many of the comments received by the Commission concerning the proposed definition of ''consumer'' disagreed that someone should be deemed a consumer of a financial institution simply by

[13] However, the Commission did receive a few comments asking that sole proprietors be excluded from the definitions of both ''company'' and ''financial institution.'' Those comments are discussed in the context of § 313.3(k).

virtue of the institution evaluating an application. These commenters maintained that the individual has not obtained a financial product or service, as is required by the statutory definition of ''consumer.'' The Commission believes that the better reading of the G-L-B Act is that an individual has obtained a financial product or service when a financial institution evaluates information provided to the financial institution for the purpose of the individual obtaining some other financial product or service. Financial institutions frequently provide a range of services in connection with the delivery of a financial product. Included within these will be the evaluation by the financial institution of information provided by an individual. In certain instances, such as when an individual is shopping for the best rate on a mortgage loan or the lowest premium for an insurance policy, that evaluation may be the sole financial product or service obtained. In other instances, the evaluation may be one of several services provided that lead up to the eventual establishment of a customer relationship. In either case, the individual will have obtained a financial product or service from the financial institution when the financial institution evaluates the information and informs the individual of the outcome of that evaluation.

In addition to being consistent with the language of the statute, the proposed definition of ''consumer'' is consistent with one of the primary purposes of Title V of G-L-B Act, namely, to enable an individual to limit the sharing of nonpublic personal information by a financial institution with a nonaffiliated third party. The information provided by a person to a financial institution before a customer relationship is established is likely to contain precisely the types of information that the statute is designed to protect. This information is no less deserving of protection simply because an application is denied or withdrawn. For these reasons, the Commission has retained the individual whose application is evaluated by a financial institution as an example of ''consumer'' in § 313.3(e)(2)(i).

Loan sales. Several commenters requested clarification of whether an individual becomes a consumer in various other scenarios involving loans. Commenters posited a wide variety of examples, which, if each were to be addressed specifically in the rule, would require a final rule of enormous complexity and detail. The Commission believes that a rule setting forth a general principle that is flexible enough to be applied in the array of loan transactions posited by the commenters is more appropriate. Towards this end, the Commission's rule provides, by example at § 313.3(e)(2)(iv), that a person will be a consumer of any entity that holds ownership or servicing rights to an individual's loan.[14] Financial institutions that own or service a loan are providing a financial product or service to the individual borrower in question. In some cases, the product or service is the funding of the loan, directly or indirectly. In other cases, the product or service is the processing of payments, sending account-related notices, responding to consumer questions and complaints about the handling of the account, and so on. The rule defines ''consumer'' in a way that covers individuals receiving financial products or services in each of these situations.

Agents of financial institutions. Several commenters agreed with the principle set out in the proposed rule that an individual should not be considered to be a consumer of an entity that is acting as agent for a financial institution. These commenters noted that the financial institution that hires the agent is responsible for that agent's conduct in carrying out the agency responsibili ties. The Commission agrees that the purposes of the G-L-B Act will be met provided the activities of the agent are the responsibility of the financial institution, and, therefore, the financial institution fulfills any obligations regarding the agent's handling of consumer information that otherwise would fall on the agents.[15] Of course, those providing services to a financial institution will also be subject to the limitations on reuse of information. *See* § 313.3(e)(2)(v).

Legal representative. The Commission also agrees with the suggestion made by several commenters that the definition of ''consumer'' should clarify that the obligations stemming from a consumer relationship may be satisfied by dealing either with the individual who obtains a financial product or service from a financial institution *or* that individual's representative. The Commission does not intend for the rule to require a financial institution to send opt out and initial notices to *both* the individual and the individual's legal representatives and has amended the final rule accordingly in § 313.3(e)(1).

Trusts. The Commission and the other Agencies received several comments concerning whether an individual who obtains financial services in connection with trusts is a consumer or customer of a financial institution. Several commenters urged the Agencies to exempt generally a financial institution from the requirements of the rule when it acts as a fiduciary, or, in the alternative, to clarify the categories of individuals that are considered to be customers. Commenters proposed, for example, that individuals who are beneficiaries with current interests should be identified as customers, whereas individuals who are only contingent beneficiaries should not be customers. Other commenters stated that when the financial institution serves as trustee of a trust, neither the grantor nor beneficiary is a consumer or customer under the rule. In these commenters' view, the trust itself is the institution's ''customer,'' and, therefore, the rule should not apply to a financial institution when it acts as trustee. These commenters also stated that when a financial institution is a trustee, it serves as a fiduciary and is subject to other obligations to protect the confidentiality of the beneficiaries' information that are more stringent than those under the provisions in the G-L-B Act. Similarly, these and other commenters claimed that an individual who is a participant in an employee benefit plan administered or advised by a financial institution does not qualify as a consumer or customer. The commenters opined that the plan sponsor, or the plan itself, is the ''customer'' for the purposes of the proposed rule. These commenters contended that plan participants have no direct relationship with the financial institution and, in any event, the financial institution is authorized to use information that would be covered under the G-L-B Act only in accordance with the directions of the plan sponsor. The commenters concluded, therefore, that the regulations should specifically exclude individuals who are participants in an employee benefit plan from the definition of consumer.

The definition of ''consumer'' in the G-L-B Act does not squarely resolve whether the beneficiary of a trust is a consumer of the financial institution that is the trustee. One consideration is that a financial institution that is a trustee assumes obligations as a fiduciary, including the duty to protect

[14] Such a person may not be a customer, however. *See* explanation of how the definition of ''customer'' will be applied in the loan context, in the discussion of the definition of § 313.3(h) and (i) below. *See also* § 313.4(c)(2) and (3)(ii) for further discussion concerning when a borrower establishes a customer relationship in the context of a loan sale.

[15] Of course, in some cases two institutions will each provide a financial service to the consumer as part of the same transaction, such as a loan broker that locates a creditor who makes a loan to the individual, in which case the consumer will have a customer relationship with both financial institutions.

the confidentiality of the beneficiaries' information, that are consistent with the purposes of the G-L-B Act and enforceable under state law. The Commission agrees with the commenters who concluded that, when the financial institution serves as trustee of a trust, neither the grantor nor the beneficiary is a consumer or customer under the rule. Instead, the trust itself is the institution's ''customer,'' and therefore, the rule does not apply because the trust is not an individual. Similarly, the Commission has excluded an individual who is a beneficiary of a trust or a plan participant of an employee benefit plan from the definitions of ''consumer'' and ''customer.'' Nevertheless, the Commission believes that an individual who selects a financial institution to be a custodian of securities or assets, for example in an IRA, is obtaining a financial product or service from the financial institution and is, therefore, a ''consumer'' under the G-L-B Act. The Commission has included examples in the rule that appropriately illustrate this interpretation of the G-L-B Act in §§ 313.3(e)(2)(vi)–(viii) and 313.3(i)(2)(i)(D).

Requirements arising from consumer relationship. While the proposed and final rule defines ''consumer'' broadly, this will not result in any additional burden to a financial institution in situations where (a) no customer relationship is established and (b) the institution does not intend to disclose nonpublic personal information about a consumer to nonaffiliated third parties. Under the final rule, a financial institution is under no obligation to provide a consumer who is not a customer with any privacy disclosures unless it intends to disclose the consumer's nonpublic personal information to nonaffiliated third parties outside the exceptions in §§ 313.14 and 313.15. A financial institution that wants to disclose a consumer's nonpublic personal information to nonaffiliated third parties is not prohibited by the rule from doing so, if the requisite notices are delivered and the consumer does not opt out. Thus, a financial institution that does not wish to be subject to the disclosure obligations of the rule as it applies to consumers who are not customers may simply decide not to share consumers' information with nonaffiliated third parties. Conversely, if a financial institution determines that the benefits of such sharing outweigh the attendant burdens, the financial institution is free to do so provided it notifies consumers about the disclosure and affords them a reasonable opportunity to opt out. In this way, the rule attempts to strike a balance between protecting an individual's nonpublic personal information and minimizing the burden on a financial institution.

f. *Consumer reporting agency.* The proposal adopted the definition of ''consumer reporting agency'' that is used in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)). It is used in §§ 313.6(c), 313.12(a), and 313.15(a)(5) of the final rule.

The Commission received no comments suggesting any changes to this definition. Accordingly, the definition is adopted as proposed.

g. *Control.* The proposal defined ''control'' using the tests applied in section 23A of the Federal Reserve Act (12 U.S.C. 371c). This definition is used to determine when companies are affiliated (see discussion of § 313.3(a), above), and would result in financial institutions being considered as affiliates regardless of whether the control is by a company or individual.

The Commission received few comments in response to this definition. Some commenters suggested that a definition that did not require 25% ownership be adopted, while others suggested adopting a test focused solely on percent of stock owned in a company so as to avoid the uncertainties arising from a ''control in fact'' test.

The Commission believes that the proposed test is sufficiently well established and has concluded that an alternative test to be used solely in the privacy rule could create confusion. The Commission also believes that any test based only on stock ownership is unlikely to be flexible enough to address all situations in which companies are appropriately deemed to be affiliated and that including the stock ownership as one measurement of control provides necessary flexibility. Accordingly, the Commission adopts the definition of ''control'' as proposed.

h. *Customer.* The proposal defined ''customer'' as any consumer who has a ''customer relationship'' with a particular financial institution. As is explained more fully in the discussion of § 313.4, below, a consumer is a customer of a financial institution when the consumer has a continuing relationship with the institution.

The Commission received a large number of comments on the definition of ''customer'' and ''customer relationship.'' Given the interdependence of the two terms, the following analysis of the comments received will address both under the heading ''customer relationship.''

i. *Customer relationship.* The proposed rule defined ''customer relationship'' as a continuing relationship between a consumer and a financial institution whereby the institution provides a financial product or service that is to be used by the consumer primarily for personal, family, or household purposes. As noted in the proposal, a one-time transaction may be sufficient to establish a customer relationship, depending on the nature of the transaction. A consumer would not become a customer simply by repeatedly engaging in isolated transactions that by themselves would be insufficient to establish a customer relationship, such as withdrawing funds at regular intervals from an ATM owned by an institution at which the consumer has no account. However, an individual who becomes the client of a loan brokerage, tax preparation firm, or financial counseling service would be a customer. The proposal also stated that a consumer would have a customer relationship with a financial institution that makes a loan to the consumer and then sells the loan but retains the servicing rights. The Commission received a large number of comments on this definition, as discussed below.

Point at which one becomes a customer. The Commission received many comments in response to the definitions of ''customer'' and ''customer relationship.'' Some commenters criticized what they considered to be the ill-defined line distinguishing consumers from customers. These commenters stated that the proposed distinction makes it difficult for a financial institution to know when the obligations attendant to a customer relationship arise. Several suggested that the distinction should be based on when a consumer and financial institution enter into a written contract for a financial product or service.

The Commission recognizes that the distinction between consumers and customers will, in some instances, require a financial institution to evaluate whether the particular facts of its consumer transactions fit within the definition of customer relationship. In those cases where an individual engages in a transaction that is isolated in nature (such as ATM transactions, purchases of money orders, or cashing of checks), the individual will not have established a customer relationship as a result of that transaction. In other situations, where a consumer typically would receive some measure of service such that the consumer's contact with the financial institution is more significant (such as would be the case when a consumer

borrows money, obtains investment advice, or becomes the client of an institution for the purpose of receiving tax preparation, loan brokerage, or credit counseling services), a customer relationship will be established. In those cases, the nature of the relationship indicates that it is not an isolated transaction, even though it may be short-term in duration.[16] The Commission believes that the distinction set out in the proposed rule, as further clarified by the examples in the final rule regarding the establishment of a customer relationship, provides sufficiently clear principles that can be applied to most fact situations that arise in the financial marketplace.

Customer relationship defined by written contract. The Commission agrees with those commenters who consider the execution of a written contract by a consumer and financial institution as clear evidence that a customer relationship has been established. The proposal cited the execution of a written contract as an example of when a customer relationship is established, and the final rule retains that example in § 313.4(c)(3)(i)(B). However, a test based solely on whether there is a written contract could inappropriately exclude situations in which an individual is a customer of a financial institution as a result of obtaining, for instance, financial, economic, or investment advisory services from a financial institution. Accordingly, the final rule does not define a customer relationship solely by the execution of a written contract.

Purchase of insurance. Other commenters suggested that, in the context of financial institutions that engage in the sale of insurance, the customer should be the policyholder and not the beneficiary. The Commission agrees and has retained the example in § 313.3(i)(2)(i)(C) of purchasing an insurance product as one situation in which a customer relationship is formed.[17] In this case, the person obtaining a financial product or service from the financial institution is the person purchasing the policy. The beneficiaries would be recipients of the insurance proceeds, thereby entitling them to the protections afforded consumers.

Sales of loans. As previously noted, several commenters raised questions in the context of loan sales. Many commenters stated that, under the final rule, a person should not be considered a customer of two financial institutions when the originating bank sells the servicing rights. A point consistently made by these commenters was that a borrower would be equally well protected with less risk of confusion if the borrower is deemed to be a customer of only one entity in connection with a loan, with that entity perhaps being the party with whom the borrower communicates about the loan. The Commission believes that it is appropriate to consider a loan transaction as giving rise to only one customer relationship, with the recognition that this customer relationship may be transferred in connection with a sale of part or all of the loan. In this way, the borrower will not be inundated by privacy notices (but rather will normally receive annual notices from the loan servicer), many of which might be from subservicers that the borrower did not know had any connection to his or her loan. However, that customer will remain a consumer of the entity that transfers the servicing rights, as well as a consumer of any other entity that holds an interest in the loan.

In order to satisfy the statutory requirement that a customer receive an annual notice from a financial institution until that relationship terminates, the final rule provides that the borrower must be deemed to have a customer relationship with at least one of the entities that hold an interest in the loan. A financial institution that makes a loan, retains it in its portfolio, and provides servicing for the loan clearly would have a customer relationship with the borrower. More complex, however, are situations in which servicing is sold or investors purchase a partial interest in a loan. The Commission has adopted an approach designed to ensure that a customer receives annual notices for the duration of the customer relationship from the most appropriate financial institution.

Under the final rule, as stated in § 313.3(i)(2)(i)(B), a customer relationship will be established as a general rule with the financial institution that makes a loan to an individual. This customer relationship then will attach to the entity providing servicing. Thus, if the originating lender retains the servicing, it will continue to have a customer relationship with the borrower and will be obligated to provide annual notices for the duration of the customer relationship. If the servicing is sold, then the purchaser of the servicing rights will establish a customer relationship (and the originating lender will have a consumer relationship with the borrower). *See* § 313.3(i)(2)(ii)(B). In this way, the borrower will be entitled to receive an initial notice and annual notices from the loan servicer, but will not be inundated by initial and annual notices from entities that hold interests in the loan but are unknown to the consumer (and who do not share the consumer's nonpublic personal information with unaffiliated third parties).

Collection agencies that purchase accounts in their own name. The Commission received a substantial number of comments from different types of debt collectors and their representatives. This section addresses several comments the Commission received concerning the proposed rule's differentiation between collectors who assist creditors in collecting delinquent accounts, and those who purchase them in their own name.[18] The Commission also received comments from all types of collection agencies on other points. Several contested the Commission's treatment of debt collectors as financial institutions.[19] Others were concerned that the rule would prohibit communications with a creditor that retained ownership on the account and hired the agency to obtain payment from debtors.[20]

Representatives of two major trade associations of debt collectors pointed to the definitions set forth in section 803 of the Fair Debt Collection Practices Act, which specifically exempts any ''creditor'' collecting its own accounts in its own name from being within the definition of a ''debt collector'' subject to that statute, and the case law holding that the ''creditor'' exemption does not include debt collectors that purchase defaulted accounts in their own name

[16] Many of the customer relationships established by institutions under the Commission's jurisdiction may well be short-term, as can be seen from the examples in § 313.5(b)(2) of when a customer relationship terminates.

[17] Despite its lack of enforcement jurisdiction over persons providing insurance, the Commission retains this example because it may be useful in evaluating analogous situations. Some commenters also asked for further clarification of ''purchase'' in this context. The Commission does not believe such clarification is necessary and has retained the example as proposed.

[18] ''A consumer has a ''customer relationship'' with a debt collector that purchases an account from the original creditor (because he or she would have a credit account with the collector), but not with a debt collector that simply attempts to collect amounts owed to the creditor.'' 65 FR 11174 at 11176 (Mar. 1, 2000).

[19] Those issues are discussed under §§ 313.1(b), 313.3(k) and 313.4.

[20] This fear is unfounded, because such a communication by a collection agency reporting to a creditor that has retained ownership of an account would be permitted under § 313.15(a)(2)(iv). That section allows communications to parties holding a legal interest relating to the consumer, which would certainly include a creditor that owns the debt.

for collection.[21] The commenters argued that, because the FDCPA does not treat collection agencies that purchase defaulted accounts in their own name as creditors, the G-L-B Act should not be interpreted to do so. In addition, debt buyers stated that they frequently made bulk purchases of defaulted accounts from creditors, immediately discarded and never even attempted to collect many of the accounts they purchased, and were unable to locate many of the account debtors from whom they wanted to collect amounts due.

The Commission recognizes that these businesses have some attributes of creditors who buy active accounts (where the debtors clearly become customers of the account purchaser) and some attributes of regular debt collectors who attempt to collect amounts due on behalf of the creditor (where the debtors clearly remain the creditor's customer). After careful consideration of the comments and the purposes of the Act, the Commission retains its view that if a business purchases a defaulted account for collection, it may establish a ''customer relationship'' with the account debtor. However, such a relationship occurs only in those instances where the agency locates the individual and tries to obtain payments on the debt. This approach reflects the reality that the collector has purchased the account (albeit for less than it would pay for a current account) and avoids the result that otherwise the individual would not have a ''customer relationship'' with anyone because the former relationship with the creditor will have been terminated. At the same time, it responds to industry commenters that contested the Commission's previous position that purchase of the account automatically establishes a customer relationship. The applicable example in § 313.3(i)(2)(i)(J) makes it clear that a debt buyer does not have a customer relationship if it does not attempt to collect payments from, or is unable to locate, the individual named on an account it has purchased.

Brokers. Several commenters suggested that the use of a mortgage broker, or other business that procures credit on behalf of a consumer, such as financing to purchase an automobile, should not create a customer relationship. The Commission disagrees. A relationship between such a business and a consumer is more than an isolated transaction, given that the broker will likely provide significant services for a consumer, such as providing information or advice about financing options, actively assisting the consumer in contacting potential financing sources, analyzing financial information, or performing credit checks. In some cases, the broker will also negotiate with other financial institutions on the consumer's behalf and/or assist with paperwork and loan closings. In light of the nature of the services provided by a loan broker or other credit arranger in assisting the consumer with financial transactions, it is appropriate to consider the business to be a financial institution that establishes a customer relationship when it undertakes to arrange or broker a home mortgage loan or other credit for the consumer. The final rule reflects this conclusion in § 313.3(i)(2)(i)(E).

IRA Custodians. The final rule adds an example in § 313.3(i)(2)(i)(D) to clarify that an individual will be deemed to establish a customer relationship when a financial institution acts as a custodian for securities or assets in an IRA. This example is consistent with the explanation set out above in the discussion of ''consumer'' concerning trusts.

j. *Federal functional regulator.* The proposal sought comment on a definition of ''government regulator'' that included all of the Agencies and State insurance authorities under the circumstances identified in the definition.[22]

The few comments that were received on this definition suggested that it be expanded to include additional governmental entities. The Commission notes that, for purposes of the privacy rule, this term (which does not include the Commission) is relevant only in the discussion of when a financial institution may disclose information to a law enforcement agency. The exception as stated in the statute uses the term ''federal functional regulator'' (*see* section 502(e)(5)), which term is defined in the statute at section 509(2) and also includes the Commission and Secretary of the Treasury, for purposes of the exception permitting disclosures to law enforcement agencies. The Commission has decided simply to use the statutory term.

k. *Financial institution.* The Commission's proposed rule defined financial institution as ''any institution the business of which is engaging in activities that are financial in nature as described in section 4(k) of the Bank Holding Company Act * * *'' Through the examples, the Commission expressed its view that an institution is a financial institution ''the business of which is engaging in activities that are financial in nature'' only if the entity is significantly engaged in such activities. The Commission received numerous comments concerning this definition.

Some commenters requested that the Commission adopt the definition of financial institution contained in the other Agencies' definition. The other Agencies defined financial institution as ''any institution the business of which is engaging in activities that are financial in nature *or incidental to such financial activities* as described in section 4(k) of the Bank Holding Company Act.'' Section 509(3) of the G–L–B Act defines the term as ''any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956.'' Section 4(k) of the Bank Holding Company Act refers to three types of activities that the Board may determine permissible for financial holding companies: those that are financial in nature, those that are incidental to such financial activity, and those that are complementary to financial activities. The Commission interprets the G-L-B Act to refer to those activities in Section 4(k) that are described as financial in nature at present, and not to include automatically those activities that the Board later determines are incidental or complementary to financial activities. Such activities are not necessarily themselves financial activities and, therefore, should not have an impact on the definition of financial institution. Thus, the final rule incorporates the statutory language in § 313.3(k).[23]

Given the breadth of the definition, some commenters requested that the Commission provide a definitive list of the entities that are subject to the rule. The Commission deems it inappropriate to publish such a definitive list. The institutions covered by the rule currently are defined by reference to the comprehensive list of activities found at section 4(k)(4) of the Bank Holding Company Act.[24] The Commission has

[21] 15 U.S.C. 1692a(4) and 1692a(6). *Cirkot v. Diversified Fin. Sys., Inc.,* 839 F. Supp. 941, 944–45 (D. Conn. 1993); *Holmes v. Telecredit Service Corp.,* 736 F. Supp. 1289, 1293 (D. Del. 1990); *Kimber v. Federal Fin. Corp.,* 668 F. Supp. 1480, 1485–86 (D. Ala. 1987).

[22] This term was used in the exception set out in § 313.11(a)(4) of the proposal as it related to disclosures to law enforcement agencies, ''including government regulators.''

[23] *See also* the discussion of the effective date at § 313.18, *infra.* Section 4(k) of the Bank Holding Company Act established procedures whereby the Board can add activities to the list of activities that it is permissible for financial holding companies to engage in. To the extent these later added activities are financial activities, and not incidental activities, the rule will not be effective as to those new financial institutions until the Commission so determines.

[24] See footnotes 5–8 and accompanying text, *supra.* These are activities either specified in

reformatted and added additional examples of financial institutions in the final rule to guide the analysis of whether a particular entity is a financial institution through reference to section 4(k)(4) and particular sections of the Board regulations that are incorporated therein by reference.

The Commission received several comments on the ''significantly engaged'' standard set forth in the examples in the proposed rule. A few expressed concern that the ''significantly engaged'' test was too imprecise to allow some businesses to know whether they were within the definition, usually suggesting alternatives that would exclude the industries they represent. The final rule does not define ''significantly engaged.'' The revenue tests suggested by some commenters are too inflexible to take into consideration all instances where an institution may be significantly engaged in a financial activity. The final rule retains the flexibility of the ''significantly engaged'' standard and provides guidance through examples. To that end, the Commission has moved the ''significantly engaged'' language into the text of the final rule and retains in the final rule those examples from the proposed rule of entities that are and are not significantly engaged in a financial activity. A retail business that issues its own credit card directly to consumers is a financial institution significantly engaged in the extension of credit, but a retail business that merely allows its retail clients to make payments through occasional lay-away plans is not significantly engaged in a financial activity. Similarly, a small merchant that informally extends credit when it ''runs a tab'' for some individuals is not significantly engaged in the business of extending credit. The Commission believes that the concept of ''significantly engaged'' is sufficiently clear to provide guidance to most entities in analyzing their specific factual situations.

Many commenters, especially some representatives of the consumer debt collection industry,[25] expressed concern at the breadth of the definition and asserted that Congress could not have intended to include all institutions that engage in the activities referenced in Section 4(k). The plain language of the statute, however, dictates that breadth and grants the Commission no authority to exclude particular entities from the definition. The broad scope of the Act, and the comments received by the Commission, are also discussed above in more detail in the context of § 313.1(b). While it is not possible to discuss every potential financial institution in detail, the Commission specifically sought comment on certain of the activities listed in section 4(k) and the Board regulations that are incorporated by reference.

The proposed rule acknowledged that one of the activities characterized as financial in nature in Section 4(k)(4) of the Bank Holding Company Act is operating a travel agency in connection with offering financial services.[26] The Commission received few comments on the extent to which travel agents operate in connection with financial services. The comments did indicate that travel agents generally do sell travelers checks, trip insurance, and travel insurance, all of which constitute financial products or services. However, the Commission does not consider a travel agency's operations to be ''in connection with offering financial services'' and therefore covered simply because it offers travelers checks or travel related insurance to their travel clients. Rather, the Commission interprets the G-L-B Act to cover travel agencies only if their travel-related services are offered in addition to offering other financial services.[27] This would cover, for example, entities that offer credit, investment, or insurance products or services, and also offer travel-related services to their clients. For these types of entities, travel operations would thereby become covered services and their travel transactions would be protected by the G-L-B Act.[28]

Some commenters requested clarification concerning whether certain Internet industries are affected by the rule. The comments in this regard did not provide sufficient detail for the Commission to evaluate all of the concerns of the commenters, but the Commission notes that institutions operating on-line, like those operating off-line, will have to evaluate (1) whether they are engaged in a financial activity, and (2) if so, whether they have consumers or customers that trigger the disclosure or other requirements of the Act. On a related issue, the Commission notes that one of the financial activities incorporated by reference into Section 4(k) of the Bank Holding Company Act is:

> ''providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, advice, and access to such services, facilities, or data bases by any technological means, if * * * [t]he data to be processed or furnished are financial, banking, or economic * * *.''

12 CFR 225.28 (b)(14). The Commission notes with respect to this activity that financial software and hardware manufacturers, as described, are financial institutions but will have no disclosure obligations if they sell only to businesses. Furthermore, in the case of an isolated one-time sale of software or hardware to a consumer, their disclosure obligations would be very limited. In addition, this language brings into the definition of financial institution an Internet company that compiles, or aggregates, an individual's on-line accounts (such as credit cards, mortgages, and loans) at that company's web site as a service to the individual, who then may access all of its account information through that Internet site.

Many entities that come within the broad definition of financial institution will likely not be subject to the disclosure requirements of the rule because not all financial institutions have ''consumers'' or establish ''customer relationships.'' Several commenters supported this distinction and the Commission retains it here. For example, management consulting is a ''financial activity'' but it is not likely

---

Section 4(k)(4) itself, or are activities listed in Board regulations referenced in Section 4(k)(4) already in effect on the effective date of the G–L–B Act. This list of activities may expand as the Board exercises its authority to add additional activities that are financial in nature pursuant to Section 4(k)(1–3) of the Bank Holding Company Act.

[25] The statute is clear that debt collection agencies are financial institutions under its terms. As noted in the discussion of the definition of ''financial institution'' below, the statute treats a broad range of activities as ''financial in nature.'' Section 509(3) of the G-L-B Act defines the term to mean ''any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956.'' Section 4(k)(4)(F) of the Bank Holding Company Act includes all financial activities deemed by the Federal Reserve Board ''to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.'' In Regulation Y, 12 CFR 225.28(b)(2)(iv), the Board specifically designated ''collection agency services'' as such a financial activity.

[26] *See* footnote 5 of the Commission's discussion of the proposal at 65 FR 11176. Section 4(k)(4)(G) of the Bank Holding Company Act includes all financial activities conducted in the United States deemed by the Federal Reserve Board ''to be usual in connection with the transaction of banking or other financial operations abroad.'' In Regulation K, 12 CFR 211.(d)(15), the Board specifically designated ''[o]perating a travel agency * * * in connection with financial services'' as such a financial activity.

[27] This analysis is consistent with an interim rule published by the Board at 12 CFR 225.86(b)(2), in which it characterized the travel agency activity ''operating a travel agency in connection with financial services offered by the financial holding company or others.'' 65 FR 14433, 14439 (Mar. 17, 2000).

[28] *See* the Commission's discussion of ''financial product or service'' in the next section, as it relates to the Act's inapplicability to nonfinancial products or services of financial institutions.

that any individual obtains management consulting services for personal, family or household purposes. Likewise, courier services, data processors, and real estate appraisers who perform services for a financial institution, but do not provide financial products or services to individuals, will not be required to make the disclosures mandated by the rule because they do not have ''consumers'' or ''customers'' as defined by the rule.[29] The Commission declines to adopt a definitive list, as requested by some commenters, of all of the financial institutions that do not have consumers and customers. Such a list inevitably will not be exclusive and may include some institutions that operate so that in some instances they have consumers and customers and in others they do not.

Some commenters suggested that sole proprietors be exempt from the definition, but provided no helpful rationale for doing so, while others requested clarification as to whether nonprofit entities could be financial institutions covered by the rule. Whether or not a commercial enterprise is operated by a single individual is not determinative in analyzing whether the entity is a ''financial institution.'' If an individual is in the ''business of * * * engaging in financial activities * * *,'' that ''business'' is included within the ''financial institution'' definition.[30] Similarly, nothing in the definition of financial institution excludes nonprofit entities from the definition of financial institution.

Few commenters addressed proposed § 313.3(j)(3)(iii), which incorporated the Act's exemption for institutions chartered by Congress to engage in secondary market sales and similar transactions related to consumers, as long as the institution does not sell or transfer nonpublic personal information to a nonaffiliated third party. This exemption applies even if the chartered institution sells or transfers information as permitted by the exceptions to the notice and opt out requirements in proposed §§ 313.10 and 313.11 (§§ 313.14 and 313.15 in the final rule). The Commission also sought comment on whether it should require chartered institutions, as a condition of their exemption, to enter into a confidentiality agreement with any nonaffiliated third parties with whom they share information pursuant to the exceptions. Chartered institutions supported the interpretation; one commenter contended that such additional language was not in keeping with the intent of the exemption. The Commission believes that its interpretation merely operates to allow chartered institutions to continue their normal business, and does not permit them (or any party receiving information from them) to disclose information unrestrained. In accord with the limitations on reuse and redisclosure in section 502(c) of the G–L–B Act, both chartered institutions and recipients of nonpublic personal information are limited in that regard. The Commission has adopted the provision as proposed.

l. *Financial product or service.* The proposal defined ''financial product or service'' as a product or service that a financial institution could offer by engaging in an activity that is financial in nature under section 4(k) of the Bank Holding Company Act of 1956. The proposal's definition included the financial institution's evaluation of information collected in connection with an application by a consumer for a financial product or service even if the application ultimately is rejected or withdrawn. It also included the brokerage and distribution of information about a consumer for the purpose of assisting the consumer in obtaining a financial product or service.

The most frequent comment on this proposed definition was that the evaluation of application information should not be considered a financial product or service. For the reasons advanced above in the discussion of the definition of ''consumer,'' the Commission concludes that it is appropriate to retain evaluation activity within the scope of financial product or service covered by the rule. Evaluation is one of many financial services provided by financial institutions. Moreover, a consumer is likely to provide the type of information that the statute is designed to protect in the course of obtaining the financial institution's evaluation.

An entity's status as a financial institution does not cause every product or service offered by that entity to be a financial product or service. A retailer that issues its own credit card directly to consumers provides a financial service (credit) to consumers who utilize the card; but when that same retailer sells merchandise, it provides a nonfinancial product or service (retail sale of merchandise).

The Commission has retained the essence of the proposed definition, but has revised § 313.(l)(1) to mirror its change to the definition of ''financial institution'' in § 313.3(k) and eliminated the word ''distribution'' from § 313.3(l)(2) because it is not intended to mean anything different from ''brokerage'' and, therefore, its use invites confusion.

m. *Nonaffiliated third party.* The proposal defined ''nonaffiliated third party'' as any person (which includes natural persons as well as corporate entities) except (1) an affiliate of a financial institution and (2) a joint employee of a financial institution and a third party. The proposal clarified the circumstances under which a company that is controlled by a financial institution pursuant to that institution's merchant banking activities or insurance company activities would be a ''nonaffiliated third party'' of that financial institution.

The Commission received very few comments in response to this proposed definition. One commenter requested that the final rule provide that a disclosure of information to someone who is serving as a joint employee of two financial institutions should be deemed to have been disclosed to both financial institutions. The Commission disagrees with this result. Instead, the Commission believes it is appropriate to deem the information to have been given to the financial institution that is providing the financial product or service in question. Thus, if an employee of a mortgage lender is a dual employee with a securities firm, information received by that person in connection with a securities transaction conducted with the securities firm would be deemed to have been received by the securities firm.

The Commission notes that its proposal omitted a section included in the other Agencies' rules relating to companies engaged in merchant banking, investment banking, or investment activities described in section 4(k)(4)(H–I) of the Bank Holding Company Act. For purposes of consistency with the rules to be adopted by the other Agencies, the Commission has included it at § 313.3(m)(2). Otherwise, the final rule defines ''nonaffiliated third party'' as proposed.

n. *Nonpublic personal information.* Section 509(4) of the G-L-B Act defines ''nonpublic personal information'' to mean ''personally identifiable financial information'' that is provided by a consumer to a financial institution, results from any transaction with the

[29] If such financial institutions receive consumers' nonpublic personal information from nonaffiliated financial institutions pursuant to one of the exceptions set forth in §§ 313.14 and 313.15, however, they would be required to observe the § 313.11 limitations on reuse and redisclosure of that information.

[30] An individual who provides a financial service only informally (*e.g.,* preparing tax forms without remuneration for friends or family, or as community service) is not likely significantly engaged in a financial activity.

consumer or any service performed for the consumer, or is otherwise obtained by the financial institution. It also includes any ''list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information.'' The statute excludes publicly available information (unless provided as part of the list, description or other grouping described above), as well as a list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using nonpublic personal information. The statute does not define either ''personally identifiable financial information'' or ''publicly available information.''

The proposed rule restated the categories of information described above and presented two alternative approaches to identifying what information would be regarded as publicly available (and therefore, as a general rule, outside the definition of ''nonpublic personal information''). Alternative A deemed information as publicly available only if a financial institution *actually obtained* the information from a public source while Alternative B treated information as publicly available if a financial institution *could* obtain it from such a source. Both Alternatives A and B included within the definition of ''nonpublic personal information'' publicly available information that is provided as part of a list, description, or other grouping of consumers. In addition to requesting comment on Alternatives A and B, the Commission requested comment concerning whether a variation of the two alternatives should be adopted that would require a financial institution to undertake reasonable procedures to establish that information is, in fact, publicly available.

Commenters favoring Alternative A noted that it provided the greatest protection for consumers by treating anything the consumer gives to a financial institution to obtain a financial product or service as nonpublic personal information. Under Alternative A, this protection would be lost only if a financial institution actually obtained the information from a public source. These commenters also preferred the bright-line distinction drawn by treating as nonpublic personal information any information given by a consumer to obtain a financial product or service or information that results from transactions between a financial institution and a consumer. However, the majority of those commenting on this issue favored Alternative B, noting that this alternative was consistent with the statute and would be far less burdensome on financial institutions. These commenters suggested that a requirement that the information actually be obtained from a public source would impose needless burdens on financial institutions (by requiring, for instance, that a financial institution ''tag'' information they obtained from public records) and is not required by the statute.

The final rule incorporates the benefits of both alternatives. Under the final rule, information will be deemed to be ''publicly available'' and therefore excluded from the definition of ''nonpublic personal information'' if a financial institution has a reasonable basis to believe that the information is lawfully made available to the general public from one of the three categories of sources listed in the rule. *See* § 313.3(p)(1). The final rule provides that a financial institution will have a ''reasonable basis'' for believing that information is lawfully made available if the financial institution has taken steps to determine whether the information is of the type that is available to the general public, whether an individual can direct that the information not be made available to the general public, and, if so, that the financial institution's particular consumer has not so directed. In this way, a financial institution will be able to avoid the burden of having to actually obtain information from a public source, but will not be free simply to assume that information is publicly available without some reasonable basis for that belief.

An example of information a financial institution might have a reasonable basis to believe is publicly available, cited in the final rule, is the fact that someone has a loan that is secured by a mortgage, as long as the financial institution has determined that the mortgage information is included on the public record in the relevant jurisdiction. *See* § 313.3(p)(3)(iii)(1). The rule also explains that a financial institution will have a reasonable basis to believe that a telephone number is publicly available only if the institution has either located the number in a telephone book or has been informed by the consumer that the number is not an unlisted telephone number. *See* § 313.3(p)(3)(iii)(2). This approach is based on the underlying principle that a financial institution should not automatically assume that an individual's information is publicly available, especially if a consumer has some measure of control over the public availability of the information.

With regard to some types of information that may be available to the general public, the extent to which a consumer can control the release of that information should be well known. For example, in most jurisdictions, a borrower has no choice about whether a lender will make a mortgage a matter of public record; a lender must do so in order to protect its security interest. In the case of a telephone number, it is well established that a person may request that his or her number be unlisted; thus, the financial institution will have to takes steps to determine whether a particular consumer has exercised that option. In other instances, there will be more variation on the general availability of the information and the consumer's right to direct that it not be disclosed. Some jurisdictions, for example, make driver's license information more available than others.[31] In evaluating whether it is reasonable to believe that information is publicly available, a financial institution must consider whether the information is of a type that a consumer could keep from being a matter of public record.

To implement the Act's complex definition of ''nonpublic personal information'' that is provided in the statute, the final rule adopts a definition that consists, generally speaking, of (1) personally identifiable financial information, plus (2) a consumer list (and publicly available information pertaining to the consumers on that list) that is derived using personally identifiable financial information that is *not* publicly available. From that body of information, the final rule excludes publicly available information (except as noted above) and any consumer list that is derived without using personally identifiable financial information that is not publicly available. *See* § 313.3(n)(1) and (2). Examples are provided in § 313.3(n)(3) to illustrate how this definition applies in the context of consumer lists.

o. *Personally identifiable financial information.* The proposed rule defined ''personally identifiable financial information'' to include information that a consumer provides to a financial institution in order to obtain a financial product or service, information resulting from any transaction between the consumer and the financial institution involving a financial product or service,

[31] The Driver's Privacy Protection Act, 18 U.S.C. 2721–2725, restricts the states' ability to disclose a driver's personal information without the driver's consent. *Reno* v. *Condon* __ U.S. __, 120 S. Ct. 666 (2000).

and information about a consumer a financial institution otherwise obtains in connection with providing a financial product or service to the consumer. The proposed rule also treated the fact that someone is a customer of a financial institution as personally identifiable financial information. In essence, the proposed rule treated any personally identifiable information as financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer. The Commission noted in the preamble to the proposed rule that this interpretation may result in certain information being covered by the rule that may not be considered intrinsically financial, such as health status.

The Commission received a large number of comments in response to this definition, most of which stated that the definition inappropriately included certain identifying information that is not financial, such as name, address, and telephone number. Many others maintained that ''personally identifiable financial information'' should not include the fact that someone is a customer of a financial institution. These commenters typically noted that many customer relationships are matters of public record (such as would be the case, for instance, anytime a transaction results in the recordation of a security interest) while other customer relationships are matters of public knowledge (because consumers frequently disclose the relationships by writing checks, using credit cards, and so on). Many commenters stated that aggregate data about a financial institution's customers that lack personal identifiers should not be considered personally identifiable financial information.

Treatment of identifying information as financial. The Commission continues to believe that any information should be considered financial information if it is requested by a financial institution for the purpose of providing a financial product or service. This approach is consistent with the broad definition of ''financial institution'' used in the statute, which encompasses not only traditional financial activities (such as banks, mortgage lenders, finance companies), but also a large number of entities that engage in activities not traditionally considered financial (such as financial career counselors, insurance companies, and data processors). As a consequence of that definition, the range of information that has a bearing on the terms and availability of a financial product or service or that is used by a financial institution in connection with providing a financial product or service is extremely broad and may include, for instance, medical information and other sorts of information that might not be thought of as financial.

Many commenters, including several hundred private investigators, expressed concern about the need for ready access to identifying information to locate people attempting to evade their financial obligations. These commenters consistently suggested that names, addresses, and telephone numbers should not be treated as financial information. However, financial institutions rely on a broad range of information that they obtain about consumers, including information such as addresses and telephone numbers, when providing financial products or services. Location information is used by financial institutions to provide a wide variety of financial services, from the sending of checking account statements to the disbursing of funds to a consumer. Other information, such as the maiden name of a consumer's mother often will be used by a financial institution to verify the consumer's identity. The Commission concluded that it would be inappropriate to carve out certain items of information that a particular financial institution might rely on when providing a particular financial product or service.

The Commission notes that names, addresses, and telephone numbers, if publicly available, will not be subject to the opt out provisions of the statute unless that information is ''derivative information'' (*i.e.,* information that is part of a list, description, or other grouping of consumers that is derived from personally identifiable financial information that is not publicly available). Thus, in instances involving specific requests about individuals, a financial institution still may disclose information about the individual that the institution has a reasonable basis to believe is publicly available, provided that in so doing the institution does not disclose the existence of a customer relationship (unless the relationship is a matter of public record, as in the case of most mortgage loans). Moreover, in instances when a consumer does not opt out, a financial institution may disclose any nonpublic personal information to a nonaffiliated third party provided that the disclosure is consistent with the institution's opt out and privacy notices.

Customer relationship as ''personally identifiable financial information.'' The Commission disagrees with those commenters who maintain that customer relationships should not be considered to be personally identifiable financial information. Information that a particular person has a customer relationship identifies that person, and thus is personally identifiable. This information also is financial, because it communicates that the person in question has a transaction involving a financial product or service with a financial institution. While this information could in certain cases be a matter of public record, that does not change the analysis of whether the information is personally identifiable financial information.

Changes made to the definition. The final rule makes various stylistic changes to the definition to make it easier to read and understand. In addition, the final rule adds to the examples of information covered by the rule any information that the institution collects through a ''cookie.'' [32] *See* § 313.3(o)(2)(F). This illustrates one of the various means by which a financial institution may ''otherwise obtain'' information about a consumer in connection with providing a financial product or service to that consumer.

An example in § 313.3(o)(2)(ii)(B) clarifies that aggregate information or blind data lacking personal identifiers is not covered by the definition of ''personally identifiable financial information.'' The Commission agrees with those commenters who opined that such data, by definition, do not identify any individual.

p. *Publicly available information.* The proposal defined ''publicly available information'' to include information that is lawfully made available to the public from official public records (such as real estate recordations or security interest filings), information from widely distributed media (such as a telephone book, television or radio program, or newspaper), and information that is required to be disclosed to the general public by Federal, State, or local law (such as securities disclosure documents). The proposed rule stated that publicly available information from widely distributed media would include information from an Internet site that is available to the general public without requiring a password or similar restriction.

As noted in the discussion of ''nonpublic personal information,'' the Commission proposed two versions of the definition of ''publicly available information.'' The final rule more closely tracks the statute while

[32] A cookie is a small text file placed on a consumer's computer hard drive by a web server. The cookie transmits information back to the server that placed it.

incorporating the benefits of both alternatives.

Several commenters questioned the appropriateness of excluding information from the definition of ''publicly available information'' if a person who seeks to obtain the information over the Internet must have a password or comply with a similar restriction. These commenters made the point that many Internet sites are available to a large number of people, each of whom need a user name and identification number to access the sites. Several of these commenters suggested that it is more appropriate to focus on whether the information was lawfully placed on the Internet.

The Commission agrees and has amended the final rule to remove the reference to passwords or similar restrictions from the example of the Internet as a ''widely distributed'' medium of communication. In its place, the Commission has substituted a standard requiring that the information be available on an unrestricted basis, and has then specified that a site is not restricted merely because an Internet service provider or a site operator requires a fee or password as long as access is otherwise available to the general public. The traditional use of passwords is to confine the access of individual customers to specific, individual information. However, website operators, in particular, may require user identifications and passwords as a method of tracking access rather than restricting access to the information available through the website. Fees may be levied to enhance the revenue of the Internet service provider or site operator rather than restrict access. Therefore, the Commission believes that the definition of ''widely distributed media'' should properly focus on whether the information is lawfully available to the general public, rather than on the type of medium from which information is obtained.

The concept of information being lawfully obtained was included in the proposal, and is retained in the final rule. Thus, information unlawfully obtained will not be deemed to be publicly available notwithstanding that it may be available to the general public through widely distributed media.

The following example illustrates how ''nonpublic personal information,'' ''personally identifiable financial information,'' and ''publicly available information'' will work under the final rule. Assume that Mary provides a mortgage lender with information in order to obtain a loan to finance a home purchase, and the same information to a retail store to open a credit card account. Under the final rule, all of this information would be personally identifiable financial information. Once Mary establishes the customer relationships she seeks, the fact that Mary is a mortgage loan customer and a credit card customer at the financial institutions also would be personally identifiable financial information.

Certain information provided by Mary, such as her name and address, may be publicly available. If the mortgage lender has a reasonable basis to believe that this information is publicly available, and if the information was included on a list of all of the institution's mortgage loan customers, then her name and address would fall outside the definition of ''nonpublic personal information'' in those jurisdictions where mortgages are a matter of public record. However, Mary's name and address would be protected as nonpublic personal information if the retailer wanted to include those items on a list of holders of its proprietary credit card. The difference in treatment stems from the distinction drawn in the statute between lists prepared using publicly available information (as would be the case in the mortgage loan hypothetical) and lists prepared using information that is not publicly available (as would be the case in the credit card hypothetical).

The Commission concludes that this relatively complex approach is mandated by the statute's definition of ''nonpublic personal information.'' The final rule also is consistent with the fact that certain relationships are matters of public record, and, therefore, less deserving of protection from disclosure.

q. *You.* The Commission used the pronoun ''you'' to refer to financial institutions within its jurisdiction in the proposal and defined ''you'' to mean those entities.

The Commission received no comments in response to this definition and adopts the definition set forth in the proposed rule.

Section 313.4 Initial Privacy Notice to Consumers Required

The G-L-B Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For consumers who are not customers, the notice must be provided prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

The proposed rule implemented these requirements by mandating that a financial institution provide the initial notice to an individual prior to the time a customer relationship is established and the opt out notice prior to disclosing nonpublic personal information to nonaffiliated third parties. These notices were required to be clear and conspicuous and to accurately reflect the institution's privacy policies and practices. The proposal also set out standards governing when a customer relationship is established and how a financial institution is to provide notice.

The Commission received many comments on proposed § 313.4. Most of the comments raised questions about the time by which initial notices must be provided, whether new notices are required for each new financial product or service obtained by a customer, the point at which a customer relationship is established, and how initial notices may be provided.

Providing initial notices ''prior to'' time customer relationship is established. Many commenters stated that, because the statute requires only that the initial notice be provided ''at the time of establishing a customer relationship,'' the regulation should not require that the notice be provided ''prior to'' the point at which a customer relationship is established. These commenters were concerned that the rule could be interpreted as requiring a financial institution to provide disclosures at a point different from when they must provide other federally mandated consumer disclosures during the process of establishing a customer relationship.

In response to these comments, the Commission has clarified the timing for providing initial notices. The final rule provides that, as a general rule, the initial notice must be given not later than the time when a financial institution establishes a customer relationship. *See* § 313.4(a)(1). As in the proposal, the initial notices may be provided at the same time a financial institution is required to give other notices, such as those required by the Board's regulations implementing the TILA. This approach, like the approach taken in the proposed rule, strikes a balance between (1) ensuring that consumers will receive privacy notices at a meaningful point along the continuum of ''establishing a customer relationship'' and (2) minimizing unnecessary burdens on financial institutions that may otherwise result if the final rule were to require financial institutions to provide consumers with a series of notices at different times in a transaction.

Providing notices after customer relationship is established. Several commenters stated that the rule should provide financial institutions with the flexibility to deliver the initial notice after the customer relationship is established under certain circumstances. These commenters posited several situations in which a customer relationship is established without face-to-face contact between the consumer and financial institution. For example, collection agencies that purchase accounts in default noted that it frequently takes time to locate debtors on such accounts (and that sometimes they do not even try to do so.) The commenters stated that delivery of the initial notice *before* the customer relationship is established in these situations would be impractical, and a requirement along those lines would have a significant adverse effect on the ability to provide a financial product or service to a consumer as quickly as the consumer desires.

The Commission believes that it is appropriate for financial institutions to have flexibility in certain circumstances to provide the initial notice at a point after the customer relationship is established. To accommodate the wider range of situations presented by the commenters, the Commission has modified the relevant examples so that they now are more broadly applicable. As stated in the final rule in § 313.4(e), a financial institution may provide the initial notice within a reasonable time after establishing a customer relationship in two instances. First, notice may be provided after the fact if the establishment of the customer relationship is not at the customer's election. *See* § 313.4(e)(1)(i). This might occur, for instance, when a credit account is sold. Second, a notice may be sent after establishing a customer relationship when to do otherwise would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time. *See* § 313.4(e)(1)(ii). An example of this would be when a transaction is conducted over the telephone and the customer desires prompt delivery of the item purchased. Another example of when this might occur is when a lender (other than a college or university) establishes a customer relationship with an individual under a student loan program as described in the final rule where loan proceeds are disbursed promptly without prior communication between the bank and the customer.

In most situations, and particularly where the establishment of a customer relationship is in person, a financial institution should give the initial notice at a point when the consumer still has a meaningful choice about whether to enter into the customer relationship. The exceptions listed in the examples, while not exhaustive, illustrate the less frequent situations when delivery either would pose a significant impediment to the conduct of a routine business practice or the consumer agrees to receive the notice later in order to obtain a financial product or service immediately.

In circumstances when it is appropriate to deliver an initial notice after the customer relationship is established, a financial institution should deliver the notice within a reasonable time thereafter. For example, a debt buyer that has purchased a defaulted account for collection in its own name would be authorized by § 313.4(e)(2)(i) to provide its privacy notice shortly after locating the debtor. Several commenters requested that the final rule specify precisely how many days a financial institution has in which to deliver the notice under these circumstances. However, the Commission believes that a rule prescribing the maximum number of days would be inappropriate because (a) the circumstances of when an after-the-fact notice is appropriate are likely to vary significantly, and (b) a rule that attempts to accommodate every circumstance is likely to provide more time than is appropriate in many instances. Thus, rather than establish an inflexible rule, the Commission has elected to retain the more general rule as set out in the proposal in § 313.4(e)(1).

Nothing in the rule is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the individual to compare its privacy policies and practices with those of other institutions in advance of conducting transactions.

New notices not required for each new financial product or service. Several commenters asked whether a new initial notice is required every time a customer obtains a financial product or service from that financial institution. These commenters suggested that the public would not materially benefit from repeated disclosures of the same information, and that requiring additional initial notices to be provided to the same consumer would be burdensome on financial institutions.

The Commission agrees that it would be burdensome, with little corresponding benefit to the public, to require a financial institution to provide the same consumer with additional copies of its initial notice every time the consumer obtains a financial product or service. Accordingly, the final rule states, in § 313.4(d)(2), that a financial institution will satisfy the notice requirements when an existing customer obtains a new financial product or service if the institution's initial, revised, or annual notice (as appropriate) is accurate with respect to the new financial product or service.

Joint accountholders. The majority of comments on how to provide notice suggested that the final rule state that a financial institution is not obligated to provide more than one notice to joint accountholders. Several of these commenters noted that disclosure obligations arising from joint accounts are well settled under other rules, such as the regulations implementing the Equal Credit Opportunity Act (Regulation B, 12 CFR part 202,) and TILA. Under both Reg. B and Reg. Z, a financial institution is permitted to give only one notice. The authorities cited include requirements that the financial institution give disclosures, as appropriate, to the ''primary applicant'' if this is readily apparent (in the case of Reg. B; *see* 12 CFR 202.9(f)) or to a person ''primarily liable on the account'' (in the case of Reg. Z; *see* 12 CFR 226.5(b)).

The Commission agrees that a financial institution should be allowed to provide initial notices in a manner consistent with other disclosure obligations. There are also circumstances, however, where more than one of the joint account holders may want separate notices. Therefore, the final rule states in § 313.9 that the financial institution may send one notice, but must honor requests from one or more account holders for separate notices. Even absent a request, a financial institution may, in its discretion, provide notices to each party to the account. This situation might arise, for instance, when a financial institution does not want one opt out election to apply automatically to all joint accountholders (*see* discussion of how to provide opt out notices, below).

Mergers. A few commenters requested guidance on what notices are required in the event of a merger of two financial institutions or an acquisition of one financial institution by another. In such a situation, the need to provide new initial (and opt out) notices to the customers of the entity that ceases to exist will depend on whether the notices previously given to those customers accurately reflect the policies and practices of the surviving entity. If

they do, the surviving entity will not be required under the rule to provide new notices.

As was stated in the preamble to the proposed rule, a financial institution must maintain any protections that it represents it will provide in its privacy notices. Financial institutions must take appropriate measures to adhere to their stated policies and practices.

Section 313.5 Annual Privacy Notice to Customers Required

Section 503 of the G-L-B Act requires a financial institution to provide notices of its privacy policies and practices at least annually to its customers ''during the continuation'' of a customer relationship. The proposed rule implemented this requirement by requiring a clear and conspicuous notice that accurately reflects the privacy policies and practices then in effect to be provided at least once during any period of twelve consecutive months. The proposed rule noted that provisions governing how to provide an initial notice also would apply to annual notices, and stated that a financial institution would not be required to provide annual notices to a customer with whom it no longer has a continuing relationship.

Several commenters requested that the final rule permit annual notices to be given each calendar year, instead of every twelve months. A variation suggested by a few commenters was to state that notices must be provided during each calendar year, with no more than 15 months elapsing between mailings. To clarify the extent of financial institutions' flexibility, the final rule retains the general rule requiring annual notices but then provides an example, in § 313.5(a)(2), stating that a financial institution may select a calendar year as the 12-month period within which notices will be provided and provide the first annual notice at any point in the calendar year following the year in which the customer relationship was established. The final rule also requires that a financial institution apply the 12-month cycle to its consumers on a consistent basis.

Several commenters suggested that a financial institution be permitted to make the annual notice available upon request only, particularly if there have been no material changes to the notice since it was last delivered or the customer has opted out. These commenters maintained that little value is added by providing customers with additional copies each year of the same information. Some suggested that financial institutions be permitted to provide a ''short-form'' annual notice, in which the institution informs its customers that there has been no change to its privacy policies and practices and that the customers may obtain a copy upon request.

The Commission has not amended the final rule to permit this approach, for two reasons. First, the Commission interprets the statute as contemplating complete disclosures annually to all customers during the duration of the customer relationship. Section 503 of the G-L-B Act states that ''not less than annually during the continuation of [a customer] relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer [*i.e.,* one with whom a customer relationship has been formed], . . . of such financial institution's policies and practices with respect to'' the information enumerated in the statute. The Commission believes that this provision contemplates a full set of disclosures to each customer once a year.

Second, the clarifications made in the final rule to the disclosure provisions make it clear that a financial institution is not required to provide a lengthy and detailed privacy notice to comply with the rule. Small institutions that do not share information with third parties beyond the statutory exceptions should be able to provide a short, streamlined notice. The rule also permits a financial institution to provide annual notices to customers over the institution's web site if the customer conducts transactions electronically and agrees to such disclosures (*see* additional discussion of this flexibility, below, in § 313.9). As a result, the final rule achieves much of the burden reduction sought by those requesting a short-form annual notice option.

Most of the remaining comments received in response to proposed § 313.5 addressed the sections governing when a customer relationship is terminated. Some noted that the examples used ''consumer'' when ''customer'' was appropriate, and the final rule is revised accordingly. A few commenters, including retailers and some whose business related to real estate transactions, stated that the example of no communication with a customer for twelve months should be amended to clarify that promotional materials would not be considered a communication about the relationship sufficient to reactivate a dormant or terminated customer relationship. These commenters generally suggested that the rule be tied to communications initiated by the customer. The Commission agrees that a communication that merely informs a person about, or seeks to encourage use of, a financial institution's products or services is not the type of communication that signifies an ongoing relationship. The final rule has been amended in § 313.5(b)(2)(vii) to reflect that the distribution of promotional materials will not prolong a customer relationship under the rule. The Commission disagrees, however, that the test should focus on whether there has been any customer-initiated contact, because there will be instances in which the customer will not initiate a contact with a financial institution within the relevant time period but nonetheless has an ongoing relationship.

Section 313.6 Information To Be Included in Initial and Annual Privacy Notices

Section 503 of the G-L-B Act identifies the items of information that must be included in a financial institution's initial and annual notices. Section 503(a) of the G-L-B Act sets out the general requirement that a financial institution must provide customers with a notice describing the institution's policies and practices with respect to, among other things, disclosing nonpublic personal information to affiliates and nonaffiliated third parties. Section 503(b) of the Act identifies certain elements that must be addressed in that notice.

The proposed rule implemented section 503 by requiring a financial institution to provide information concerning:

- The categories of nonpublic personal information that a financial institution may collect;
- The categories of nonpublic personal information that a financial institution may disclose;
- The categories of affiliates and nonaffiliated third parties to whom a financial institution discloses nonpublic personal information, other than those to whom information is disclosed pursuant to an exception in section 502(e) of the G-L-B Act;
- The financial institution's policies with respect to sharing information about former customers;
- The categories of information that are disclosed pursuant to agreements with third party service providers and joint marketers and the categories of third parties providing the services;
- A consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties;
- Any disclosures regarding affiliate information sharing opt outs a financial

institution is providing under the FCRA; and

• The financial institution's policies and practices with respect to protecting the confidentiality, security, and integrity of nonpublic personal information.

The Commission received a large number of comments concerning these requirements, with the majority of comments making the points summarized below.

Level of detail required. Many commenters offered the general observation that the level of detail that would be required under the proposed rule would result in lengthy, complicated, and ultimately confusing disclosures. These comments have led the Commission to clarify the level of detail that is required in a financial institution's initial and annual disclosures to contain.

Neither the Act nor this rule requires a financial institution to publish lengthy disclosures that identify with precision every type of information collected or disclosed, the name of every entity with whom the financial institution shares information, a complete description of the technical specifications of methods used by the institution to protect its customers' records, or the identity of each employee who has access to the records. Instead, the Commission has concluded that the statute, by focusing on ''categories'' of information and recipients of information, is intended to require notices that provide consumers with a general description of the third parties to whom a financial institution discloses nonpublic personal information, the types of information it discloses, and the other information about the institution's privacy policies and practices listed above. The Commission's intent is that the notice must be reasonably designed to be meaningful to consumers. The final rule, like the proposal, permits a financial institution to comply with these notice requirements by providing a description that accurately represents its privacy policies and practices. The Commission believes that in most cases the initial and annual disclosure requirements can be satisfied by disclosures contained in a tri-fold brochure.

To address commenters' concerns about the likelihood that consumers will not read long, detailed disclosures, the Commission has revised the examples of the disclosures set out in proposed § 313.6(e), which appears in the final rule at § 313.6(c), to clarify the level of detail that it thinks is appropriate under the G-L-B Act. Sample clauses have been provided in Appendix A to the rule, and guidance for certain institutions has been set out below in Section D. Because the examples are not exclusive, the final rule permits a financial institution to use categories different from those provided in the examples, thereby providing additional flexibility for financial institutions in complying with the disclosure requirements. In addition, the language in § 313.6(a) that precedes the items of information to be addressed in the initial notice has been amended to clarify that a financial institution is required only to address those items that apply to the institution. Thus, for instance, if a financial institution does not disclose nonpublic personal information to third parties, it may simply omit any reference to the categories of affiliates and nonaffiliated third parties to whom the institution discloses nonpublic personal information. The Commission has made these changes to clarify financial institutions' obligations under the statute and thereby eliminate unnecessary confusion.

The required content is the same for both the initial and annual notices of privacy policies and practices. While the information contained in the notices must be accurate as of the time the notices are provided, a financial institution may prepare its notices based on current and anticipated policies and practices.

The Commission received conflicting suggestions relating to disclosures required about information provided to service providers and joint marketers. Some industry commenters suggested that the example in § 313.6(a)(5) required the same specificity as other disclosures and that it should be collapsed into § 313.6(a)(1–4). Some consumer advocates asked for more detail with respect to these disclosures, because consumers cannot opt out of them. The Commission believes that the example in § 313.6(a)(5) appropriately requires a ''separate statement'' on this point, and that this is sufficient to alert consumers about this practice. Therefore, it retains the example as proposed.

Short-form initial notice. The Commission has reconsidered the need to give consumers a copy of a financial institution's complete initial notice when there is no customer relationship. In these circumstances, the Commission believes that the objectives of the statute can be accomplished in a less burdensome way than was proposed and has exercised its exemptive authority as provided in section 504(b) to create an exception to the general rule that otherwise requires a financial institution to provide both the initial and opt out notices to a consumer before disclosing nonpublic personal information about that consumer to nonaffiliated third parties.

This exception is set out in § 313.6(d) of the final rule, which states that a financial institution may provide a ''short-form'' initial privacy policy notice along with the opt out notice to a consumer with whom the institution does not have a customer relationship. The short-form notice, along with the opt out notice, must clearly and conspicuously state that the disclosure containing information about the institution's privacy policies and practices is available upon request and provide one or more reasonable means by which the consumer may obtain a copy of the notice. This approach reflects the conclusion that consumers who do not become customers of a financial institution generally will have less interest in the privacy policies of that financial institution and will benefit from obtaining a concise, but meaningful, opt out notice that informs the consumer about the categories of their information the institution intends to disclose and the categories of nonaffiliated third parties that will receive the information. Consumers who are interested in the more complete privacy disclosures will be provided with a convenient means to obtain them.

Information about affiliate sharing. Another point made by several commenters in response to proposed § 313.6 was that the rule should not include a requirement that categories of affiliates with whom a financial institution shares information be included in the initial and annual notices. These commenters pointed out that the statute specifically requires disclosures of categories of nonaffiliated third parties only, and that the only statutorily mandated disclosures concerning affiliate sharing are disclosures required, if any, concerning affiliate sharing pursuant to section 603(d)(2)(A)(iii) of the FCRA.[33] These commenters concluded that the Commission, by expanding the disclosure requirements in the manner

[33] Section 603(d)(2)(A)(iii) excludes from the definition of ''consumer report'' the communication of certain consumer information among affiliated entities if the consumer is notified about the disclosure of such information and given an opportunity to opt out of the disclosure of that information. The information that can be disclosed to affiliates under this provision includes information from consumer reports. It also includes personal information provided directly by consumers to institutions in applications for financial products or services, such as information on income and assets.

prescribed in the proposed rule, would be exceeding its rulemaking authority and imposing unnecessary burdens on financial institutions.

The language and legislative history of section 503 support requiring disclosures of affiliate sharing beyond what may be required by the FCRA. First, section 503(b) does not state that the items listed therein are to be the only items set out in a financial institution's initial and annual disclosures. Instead, it uses the nonrestrictive phrase ''shall include'' when discussing the contents of the disclosures, thereby preserving flexibility for the Commission (which was expressly granted authority under section 503(a) to prescribe rules governing these notices) to require that additional items be addressed in the disclosures consistent with those specifically enumerated.

Second, section 503(a) provides that the financial institution shall provide in its initial and annual notices ''a clear and conspicuous disclosure * * * of such financial institution's policies and practices with respect to—(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed; * * *.'' While the FCRA disclosures would be a subset of the disclosures required by section 503(a)(1), they may not be sufficient to fully satisfy that requirement.

Third, the legislative history of the G-L-B Act suggests that Congress intended for the disclosures to provide more information about affiliate sharing than what may be required under the FCRA.[34] That history underscores the Congressional intent of ensuring that individuals are given the opportunity to make informed decisions by reviewing the privacy policies and practices of financial institutions. The Commission believes that limiting the disclosures about affiliate sharing just to those disclosures required under the FCRA would frustrate that purpose.

Disclosures of the FCRA opt out right. Another frequent comment was that a financial institution should not be required to include FCRA disclosures in its annual notices. As previously discussed, section 503(b)(4) of the G-L-B Act requires a financial institution's initial and annual notice to include the disclosures required, if any, under section 603(d)(2)(A)(iii) of the FCRA. The proposed rule implemented section 503(b)(4) of the G-L-B Act by including the requirement that a financial institution's initial and annual notice include any disclosures a financial institution makes under section 603(d)(2)(A)(iii) of the FCRA. Several commenters pointed out that the FCRA requires disclosures of a consumer's right to opt out of affiliate sharing only once. They noted that the G-L-B Act states, in section 506(c), that nothing in the G-L-B Act is to be construed to modify, limit, or supersede the operation of the FCRA. The ''if any'' language of section 503(b)(4), read in the context of section 506, suggests that, since at most only one notice must be provided under the FCRA, section 503 should require only one FCRA disclosure under the privacy rule. The commenters concluded that, by requiring more notices than are required under the FCRA, the Commission would be violating this express preservation of the FCRA.

In order to comply with the requirement of the G-L-B Act that it disclose its policies and practices with respect to sharing information with affiliated and nonaffiliated third parties, a financial institution, must describe the circumstances under which it will be sharing information with affiliates. Clearly, the ability of consumers to opt out of affiliate information sharing under the FCRA affects a financial institution's policies and practices with respect to disclosing information to its affiliates. The Commission finds that failing to include this information and an explanation of how the opt out right may be exercised would make the disclosures incomplete. Thus, a financial institution must include this information in its initial and annual notices.

The commenters' reading of sections 503 and 506 is wrong. Section 503 does not distinguish between the disclosures to be provided in the initial notice from those to be provided in the annual notice. Thus, a plain reading of section 503 suggests that any disclosures that are required under the FCRA must be included in both the initial and annual notices.

The ''if any'' language is a recognition that not all institutions provide FCRA notices because not all institutions engage in the type of affiliate sharing covered by the FCRA. By requiring the FCRA notice to appear as part of the annual notice under the privacy rule, the Commission is not modifying, limiting, or superseding the operation of the FCRA; financial institutions will have exactly the same FCRA obligations following the effective date of the privacy rule as they had before. The only difference will be that, as is required by the G-L-B Act, a financial institution's initial and annual disclosures about its privacy policy and practices will need to reflect how the financial institution complies with the affiliate sharing provisions of the FCRA.

Disclosures of the right to opt out. Other commenters suggested that the final rule eliminate the requirement that the initial and annual notices contain disclosures about a consumer's right to opt out. These commenters pointed out that the statute does not specifically require these disclosures.

As previously discussed, section 503(a) of the statute requires a financial institution to disclose its policies and practices with respect to sharing information, both with affiliated and nonaffiliated third parties. Given that a financial institution's practices with respect to sharing nonpublic personal information with nonaffiliated third parties will be affected by the opt out rights created by the statute, an institution will need to describe these opt out rights in order to provide a complete disclosure that satisfies the statute.

Other comments. Many commenters expressed support for a number of the provisions in proposed § 313.6. For instance, several commenters noted their agreement with the approach of permitting a financial institution to state generally that it makes disclosures to nonaffiliated third parties ''as permitted by law'' to describe disclosures made pursuant to one of the exceptions. Others agreed with the proposed flexibility to allow a disclosure to be based on current and contemplated information sharing. In addition, the Commission received may requests for model forms of privacy notices. In light of these comments, the Commission has adopted proposed § 313.6 with changes as discussed above, plus stylistic changes to the material in § 313.6 that are intended to make the rule easier to read, and added the sample clauses in Appendix A.

Section 313.7 Form of Opt Out Notice to Consumers; Opt Out Methods

Paragraph (a) of proposed § 313.8 required that any opt out notice provided by a financial institution be clear and conspicuous and accurately explain the right to opt out. The

[34] *See, e.g.*, remarks of Sen. Gramm (noting that the privacy bill contains ''for the first time a full disclosure requirement. It requires every bank in America, when you open your account to tell you precisely what their policy is: Do they share personal financial information within the bank? Do they share it outside the bank?''), 145 Cong. Rec. S13786 (daily ed. Nov. 3, 1999); remarks of Sen. Hagel, *id.* at S13876 (''Financial institutions would be required to disclose their privacy policies to their customers on a timely basis. If customers do not believe adequate protections exist at their institution, they can take their business elsewhere.'').

proposed rule also required a financial institution to provide the consumer with a reasonable means by which to opt out, required a financial institution to honor an opt out election as soon as reasonably practicable, and stated that an opt out election survived until revoked by the consumer. The Commission received several comments in response to each of these provisions, addressing the application of these rules to joint accounts, the means by which an opt out right may be exercised, duration of an opt out, the level of detail required in the opt out notice, and the time by which an opt out election must be honored. These points are addressed below.

Joint accounts. Most of the commenters on this issue stated that a financial institution should have the option of providing one notice per account, regardless of the number of persons on the account. The Commission has added a new § 313.7(d) to address this issue. Under the final rule, a financial institution has the option of providing only one initial, annual, and opt out notice per account. However, if one or more of the joint account holders requests separate notices, the financial institution must honor that request. Even in instances where only one notice is provided, any of the accountholders must have the right to opt out. The final rule requires a financial institution to state in the opt out notice provided to a joint accountholder whether the institution will consider an opt out by a joint accountholder as an opt out by all of the associated accountholders or whether each accountholder is permitted to opt out separately.

Means of opting out. Another issue addressed by many commenters concerned the means by which consumers may opt out. Several suggested that a financial institution, after having provided reasonable means of opting out, should be able to require consumers to use those means exclusively. The Commission recognizes that a financial institution may not have trained personnel or systems in place to handle opt out elections at each point of contact between a consumer and financial institution. Assuming a financial institution offers one or more of the opt out means provided in the examples in the final rule or a means of opting out that is comparably convenient for a consumer, the institution may require consumers to opt out in accordance with those means and choose not to honor opt out elections communicated to the institution through alternative means. A new paragraph (iv) has been added to § 313.7(a)(2)(iv) to reflect this. However, as stated in § 313.7(a)(2)(iii)(A), a financial institution may not require a consumer to write his or her own letter in order to opt out.

Several commenters supported the alternative ways in which financial institutions could provide for consumers to opt out, especially the toll-free number set forth in § 313.8(a)(2)(ii)(D) in the Commission's proposal that was not included in the other Agencies' proposed rule. The Commission has retained that example in § 313.7(a)(2)(ii)(D) of the final rule, and the other Agencies have added the toll-free telephone number to their lists of examples. The Commission also received numerous comments indicating that one of the proposal's means of opting out, providing a self-addressed stamped envelope with a detachable card, was too burdensome. The Commission has, therefore, revised that example to provide for a reply form that contains the relevant address to facilitate the consumers ability to return it.

Duration of opt out. Several commenters questioned the practicality of the rule concerning duration of an opt out, as provided in § 313.8(e) of the proposal. These commenters noted that, under the proposal, a financial institution would be required to keep track of opt out elections forever. To illustrate their point, the commenters posited the example of a person who opts out during the course of establishing a customer relationship with a financial institution, terminates that relationship, and then establishes another customer relationship several years later, perhaps under a different name or with someone on a joint account. The commenters suggested that it would be more appropriate in these circumstances to treat the opt out election made in connection with the first relationship as applying solely to that relationship.

The Commission agrees. Thus, under the final rule, a financial institution is not required to treat an opt out election made by a customer in connection with a prior customer relationship as applying solely to the nonpublic personal information that the financial institution collected during, or related to, that relationship. That opt out will continue until the customer revokes it. However, if the customer relationship terminates and a new one is established at a later point, the financial institution must then provide a new opt out notice to the customer in connection with the new relationship and any prior opt out election does not apply to the new relationship.

Level of detail required in opt out notice. A few commenters expressed concern about the level of detail they perceived the proposed rule to require in an opt out notice. These commenters interpreted the statement in proposed § 313.8(a)(2) that a financial institution ''provides adequate notice . . . if [the institution] identifies all of the categories of nonpublic personal information that [the institution] discloses or reserves the right to disclose to nonaffiliated third parties as described in [§ 313.6]'' as requiring a more detailed disclosure of categories of nonpublic personal information and nonaffiliated third parties than is required in the initial and annual notices.

The Commission did not intend this result, and specifically referred to § 313.6 in the proposed opt out provision to address precisely the concern raised by these commenters. The disclosures in the initial and annual notices of the categories of nonpublic personal information being disclosed and the categories of nonaffiliated third parties to whom the information is disclosed will suffice for purposes of the opt out notices as well. If the opt out notice is a part of the same document that contains the disclosures that must be included in the initial notice, then the financial institution is not required to restate the same information in the opt out notice. In this instance, the rule requires only that the categories of nonpublic personal information the institution intends to share and the categories of nonaffiliated third parties with whom it will share are clearly disclosed to the consumer when the opt out and privacy notices are read together.

One commenter suggested that, while a financial institution should have the option of providing an opt out notice that is sufficiently broad to cover anticipated disclosures, the financial institution also should be permitted to provide a customer who already has opted out with a new opt out notice in connection with a new financial product or service and, if the consumer does not opt out a second time, be free to disclose nonpublic personal information obtained in connection with that financial product or service to nonaffiliated third parties. The Commission believes that a financial institution should be permitted the flexibility to provide opt out notices that are either clearly limited to specific types of nonpublic personal information and types of nonaffiliated third parties, or that are more broadly worded to anticipate future disclosure plans. However, if a consumer opts out after

receiving an opt out notice from a financial institution that is broad enough to cover the new type of information sharing desired by that institution, the failure of the consumer to opt out again does not revoke the earlier opt out election.

Time by which opt out must be honored. Under the proposal, a financial institution is directed to comply with an opt out election ''as soon as reasonably practicable.'' A large number of comments asked the Commission to clarify in the final rule how long a financial institution has after receiving an opt out election to cease disclosing nonpublic personal information to nonaffiliated third parties. Suggestions for a more precise standard ranged from mandating that a financial institution stop disclosing information immediately to a mandatory cessation within several months of receiving the opt out. As was the case with other suggestions for bright-line standards in different contexts, the Commission believes that it is appropriate to retain a more general rule in light of the wide range of practices throughout the various financial institutions within its jurisdiction. A potential drawback of a more prescriptive rule is that an institution might use the standard as a safe harbor in all instances and thus fail to honor an opt out election as early as it is otherwise capable of doing. Another drawback is that a standard that is set in light of current industry practices and capabilities may become outmoded as advances in technology increase efficiency. The Commission therefore declines to adopt a more rigid standard and instead retains the rule as set out in § 313.7(e) of the final rule.

For the reasons stated above, the Commission adopts, in § 313.7, the rule governing the form of opt out notices and methods of opting out as discussed above. This section contains other stylistic changes to what was proposed in order to make the final rule easier to read.

Section 313.8 Revised Privacy Notices

The proposed rule, in § 313.8(c) (''Notice of change in terms''), prohibited a financial institution (directly, or through its affiliates) from disclosing nonpublic personal information about its consumers to nonaffiliated third parties unless the institution first provided a copy of its privacy notice and opt out notice. The proposal also required that these notices be accurate when given. Thus, if an institution wants to disclose nonpublic personal information in a way that is not accurately described in its notices, the institution would be required under the proposed rule to provide new notices before making the disclosure in question.

The only comments relating to these requirements received by the Commission posited that a revised notice should be required only upon material changes. Section 313.8(a)(i) addresses this point—no new notice is required if the original notice ''accurately describes'' the institution's policies. Accordingly, the Commission adopts the rule as proposed, but places the relevant provisions in a separate section (§ 313.8, ''Revised privacy notices'') in the final rule for emphasis. The final rule sets out examples in § 313.8(b) of when a new notice would, and would not, be required.

Section 313.9 Delivering Privacy and Opt Out Notices

The proposed rules governing delivery of initial, annual, and opt out notices were set out in proposed §§ 313.4(d), 313.5(b), and 313.8(b), respectively. Given the substantial similarities between the three sets of rules, the Commission has decided to combine the rules in one section in order to make it easier for the reader. Accordingly, the final rule states these rules in § 313.9.

The general rule requires that notices be provided in a manner so that each consumer can reasonably be expected to receive actual notice in writing, or, if the consumer agrees, electronically. The Commission received a number of comments on the various provisions governing delivery, as discussed below.

Posting initial notices on a web site. A few commenters suggested that a financial institution be allowed to deliver initial notices simply by posting its notice on the institution's web site. Some of them criticized the example in proposed § 313.4(d)(5)(C) that required the consumer to acknowledge receipt of an electronic communication as tantamount to an ''opt-in'' provision; conversely, at least one consumer representative vigorously contended that it was essential that the consumer affirmatively respond in this situation because computer literacy cannot be presumed from the use of a web site.

There will be instances when a notice on a web site may be delivered in a way that will enable the financial institution to reasonably expect that the consumer will receive it. The final rule retains, as an example of one way to comply with the rule, the posting of a notice on a web site and requiring a consumer to acknowledge receipt of the notice as a step in the process of obtaining a financial product or service. *See* § 313.9(b)(1)(iii). However, the mere posting of a notice on a web site would not be sufficient in all cases for the financial institution to reasonably expect its consumers to receive the notice. Accordingly, the Commission does not view the limited acknowledgment of receipt in this context as equivalent to an opt in requirement.

Posting annual notices on a web site. Several commenters requested that a privacy notice posted by a financial institution on its web site be deemed to satisfy the annual notice requirement, at least for customers who agree to receive notices on the institution's web site. The final rule contains a new § 313.9(c)(i) to clarify that a financial institution may reasonably expect that a customer who uses the institution's web site to access financial products or services will receive actual notice if the customer has agreed to accept notices at the institution's web site and the financial institution posts a current notice of its privacy policies and practices continuously and in a clear and conspicuous manner on the web site.

The Commission views it as appropriate to post the annual notice on the web site only where the customer is in a relationship with the financial institution that is conducted almost entirely at the web site and where the customer has explicitly agreed to receive all of its notices and financial information at the web site. Moreover, the financial institution must position any link or links to the privacy policy such that they are evident to the customer wherever the customer may go on the web site to conduct transactions or obtain information. In those circumstances, the Commission agrees that it is appropriate to provide annual notices in this way for customers who conduct transactions electronically and agree to accept notices on a web site. This will reduce burden on financial institutions while ensuring that customers who transact business electronically will have access to institutions' privacy policies and practices.

Disclosures to customers requesting no communication. Several commenters suggested the Commission clarify in the final rule how the disclosure obligations may be met in the case of a customer who requests that the institution refrain from sending information about the customer's relationship. These commenters stated that, in this case, the customer's request should be honored.

The Commission agrees. When a customer provides explicit instructions for a financial institution not to communicate with that customer, the

Commission believes that the request should be honored. The final rule clarifies, in § 313.9(c)(ii), that financial institutions need not send notices to a customer who requests no communication, provided that a notice is available upon request.

Reaccessing a notice. A few commenters stated that the requirement that a privacy policy be provided in a way that enables a customer to either retain or reaccess the notice should clarify that the rule obligates a financial institution to make available only the privacy policy currently in effect. These commenters were concerned about the potential for confusion and the burden stemming from a rule that would require a financial institution to make available every version of its privacy policies. The Commission agrees that it is appropriate to require only that the current privacy policy be made available to someone seeking to obtain it after having received the initial notice, and has revised the final rule accordingly in § 313.9(e)(2)(iii).

Joint notices. Other commenters requested that the rule clarify that the privacy policies and practices of several different affiliated financial institutions may be described on a single notice. Further, commenters requested that the final rule address whether affiliated financial institutions, each of whom has a customer relationship with the same consumer, may elect to send only one notice to the consumer on behalf of all of the affiliates covered by the notice and have that one notice satisfy the disclosure obligations under § 313.4 of each affiliate. Financial institutions should be able to combine initial disclosures in one document. The Commission also believes that it is appropriate to permit financial institutions that prepare a combined initial or annual notice to give, on a collective basis, a consumer only one copy of the notice. The final rule reflects this flexibility, in § 313.9(f). The notice must be accurate for all financial institutions using the notice, and must identify by name each of the institutions. The Commission also notes that financial institutions that provide one combined notice must be capable of keeping track of whether a consumer has opted out in order to ensure that disclosures are made in accordance with whatever opt out instructions a consumer provides after having received the joint notice.

Section 313.10 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties

Section 502(a) of the G-L-B Act generally prohibits a financial institution, directly or through its affiliates, from sharing nonpublic personal information about a consumer with a nonaffiliated third party unless the institution provides the consumer with a notice of the institution's privacy policies and practices. Section 502(b) further requires that the financial institution provide the consumer with a clear and conspicuous notice that the consumer's nonpublic personal information may be disclosed to nonaffiliated third parties, that the consumer be given an opportunity to opt out of that disclosure, and that the consumer be informed of how to opt out. Section 313.7 of the proposed rule implemented these provisions by requiring a financial institution to give the consumer the initial notice required by § 313.4, the opt out notice required by § 313.8, and a reasonable opportunity to opt out.

Most of the comments addressing these requirements focused on the question of what is a reasonable opportunity to opt out. Suggestions ranged from a financial institution having the right to begin sharing information immediately (when the opt out and initial notices are provided as part of a transaction being conducted electronically, such as might be the case in an ATM transaction) up to a mandatory delay of 120 days from the time the notices are provided.

The wide variety of suggestions underscores the appropriateness of a more general test that avoids setting a mandatory waiting period applicable in all cases. For isolated transactions where a financial institution intends to disclose nonpublic personal information that it obtains through an electronic transaction and the consumer is provided a convenient means of opting out as part of the transaction, it would be reasonable not to force the financial institution to wait a set period of time before sharing the information. Thus, the example in § 313.10(a)(3)(iii) provides flexibility. For other opt out notices that are provided by mail, the Commission believes it is appropriate to allow the consumer additional time. In these latter instances, the Commission considers it reasonable to permit the consumer to opt out by mailing back a form, by calling a toll-free number, or by any other reasonable means within 30 days from the date the opt out notice was mailed. *See* § 313.10(a)(3)(i). The final rule also provides an example of a reasonable opportunity for opting out in connection with accounts opened on-line. *See* § 313.10(a)(3)(ii). However, rather than try to anticipate every scenario and establish a time frame that would accommodate each, the rule simply provides that the consumer must be given a reasonable opportunity to opt out and then provide a few illustrative examples of what would be reasonable in different contexts.

Other comments pointed out that proposed § 313.7(a)(3)(i), which is § 313.10(a)(3)(i) of the final rule, inappropriately implied that the opportunity to opt out by mail is available only when a consumer has a customer relationship with the financial institution. The final rule deletes the reference to a customer relationship in that section to avoid that implication.

Section 313.11 Limits on Redisclosure and Reuse of Information

Section 502(c) of the G-L-B Act provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or indirectly through an affiliate, disclose the information to any person that is not affiliated with both the financial institution and the third party, unless the disclosure would be lawful if made directly by the financial institution. The proposed rule implemented section 502(c) by imposing limits on redisclosure that apply both to a financial institution that receives information from a nonaffiliated financial institution and to any nonaffiliated third party that receives nonpublic personal information from a financial institution. The proposed rule also imposed limits on the ability of financial institutions and nonaffiliated third parties to reuse nonpublic personal information they receive. As noted in the preamble to the proposed rule, sections 502(b)(2) and 502(e) permit disclosures of nonpublic personal information for specific purposes. The Commission sought comment on whether the final rule should limit the ability of an entity that receives nonpublic personal information pursuant to an exception to use that information only for the purpose of that exception. The Commission also sought comment on what the term ''lawful'' means in the context of section 502(c), and whether a recipient of nonpublic personal information could ''lawfully'' disclose information if the disclosure complied with a notice provided by the institution that made the disclosure initially. Finally, the Commission invited comment on whether the rule should require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.

The Commission received many comments in response to this proposed section. A few opined that the Commission would exceed its rulemaking authority if the final rule were to retain the limits on reuse of information, given that section 502(c) expressly addresses only redisclosures and not reuse. Most comments concerning proposed § 313.12 stated that financial institutions should not have to monitor compliance with the redisclosure and reuse provisions of the rule, although these commenters said that financial institutions typically will contractually limit the recipient's ability to reuse information for purposes other than those for which the information was disclosed. The Commission also received comments from consumer reporting agencies, individual reference services, private investigators, and direct marketers stating that consumer reporting agencies should be able to continue their practice of selling ''credit header'' information that they obtain from financial institutions, as well as some comments stating that the Commission should clarify that the rules prohibit the continued distribution of such information by consumer reporting agencies. These issues are addressed below.

Limits on reuse. Those critical of imposing limits on reuse believe that Congress, by addressing limits on redisclosures in section 502(c), provided the only limits that may be imposed on what a recipient of nonpublic personal information can do with that information. The Commission disagrees. Section 502(c) is silent on the question of reuse, making it necessary to look to the overall purposes of the statute to determine whether the Commission should impose limits on the ability of nonaffiliated third parties to reuse nonpublic personal information that they receive from a financial institution. The Act makes it appropriate to impose limits on reuse, depending on whether the information was obtained pursuant to one of the exceptions in section 502(e) of the G-L-B Act (as implemented by §§ 313.14 and 313.15 of the final rule).

When disclosures are made to nonaffiliated third parties in connection with one of the purposes set out in section 502(e), those disclosures are exempt from the notice and opt out protections altogether. A customer has no right to prohibit those disclosures or even to know more than that the disclosures are being made ''as permitted by law.'' A consumer who does not establish a customer relationship is not even put on notice that the disclosures are made as permitted by law, because the consumer is not entitled to any privacy or opt out notice. The only protection afforded by the statute for disclosures made under section 502(e) is the limited nature of the exceptions. It would be inappropriate to undermine the key privacy requirements of the Act that ensure a consumer can generally control the disclosure of his or her nonpublic personal information by allowing the recipient of nonpublic personal information under the section 502(e) exception to reuse the information for any purpose, including marketing.

By contrast, when a consumer decides not to opt out after being given adequate notices and the opportunity to do so, that consumer has made a decision to permit the sharing of his or her nonpublic personal information with the categories of entities identified in the financial institution's notices. The consumer's primary protection in the case of a disclosure falling outside the section 502(e) exceptions comes from receiving the mandatory disclosures and the right to opt out. The statute provides only the additional protection in section 502(c), restricting a recipient's ability to redisclose information to entities that are not affiliated with either the recipient or the financial institution making the disclosure initially. Thus, if a consumer permits a financial institution to disclose nonpublic personal information to the categories of nonaffiliated third parties that are described in the institution's notices, recipients of that nonpublic personal information appear authorized under the statute to make disclosures that comply with those notices.

To implement this statutory scheme, the Commission has retained a limit on reuse in addition to the limit on redisclosures. The limits on redisclosure and reuse that apply to recipients of information and their affiliates will vary, depending on whether the information was provided pursuant to one of the section 502(e) exceptions.

For nonpublic personal information provided pursuant to section 502(e), a financial institution receiving the information may disclose the information to its affiliates or to affiliates of the financial institution from which the information was received. It may also disclose and use the information pursuant to an exception in §§ 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which the institution received the information. Therefore, the financial institution's affiliates may disclose and use the information, but only to the extent permissible for the financial institution under those exceptions.

For nonpublic personal information provided *outside* one of the section 502(e) exceptions (*i.e.*, where a customer or consumer has not opted out), the financial institution receiving the information may disclose the information to its affiliates or to the affiliates of the financial institution that made the initial disclosure. It may also disclose the information to any other person, if the disclosure would be lawful if made directly by the financial institution from which the information was received. This would enable the receiving institution to redisclose information pursuant to one of the section 502(e) exceptions. It also would permit the receiving institution to redisclose information in accordance with the opt out and privacy notices given by the institution making the initial disclosures, as limited by any opt out elections received by that institution. The affiliates of a financial institution that receives nonpublic personal information may disclose only to the extent that the financial institution may disclose the information.

These same general rules apply to a *non-financial institution* third party that receives nonpublic personal information from a financial institution. Thus, the third party receiving the information pursuant to one of the section 502(e) exceptions may disclose the information to its affiliates or to the affiliates of the financial institution that made the disclosure. The third party also may disclose and use the information pursuant to one of the section 502(e) exceptions as noted in the rule. The affiliates of the third party may disclose and use the information only to the extent permissible for the third party. If the third party receives the information from a financial institution outside one of the section 502(e) exceptions, the third party may disclose to its affiliates or to the affiliates of the financial institution. It may also disclose to any other person if the disclosure would be lawful if made by the financial institution. The third party's affiliates may disclose and use the information to the same extent permissible for the third party.

To summarize, in cases where an entity receives information outside of one of the section 502(e) exceptions, that entity will in essence ''step into the shoes'' of the financial institution that made the initial disclosures. Thus, if the financial institution made the initial disclosures after representing to its consumers that it had carefully screened the entities to whom it intended to

disclose the information, the receiving entity must be able to comply with those representations. Otherwise, the subsequent disclosure by the receiving entity would not be in accordance with the notices given to consumers and would not, therefore, be lawful. Even if such representations do not prevent the recipient from redisclosing the information, the recipient's ability to redisclose will be limited by whatever opt out instructions were given to the institution making the initial disclosures and by whatever new opt out instructions are given after the initial disclosure. The receiving entity, therefore, must have procedures in place to continually monitor the status of who opts out and to what extent. Given these practical limitations on the ability of a recipient to disclose pursuant to another institution's privacy and opt out notices, redisclosure of information is most likely to arise under one of the section 502(e) exceptions (as implemented by §§ 313.14 and 313.15 of the final rule).

Monitoring third parties. The final rule does not impose a general duty on financial institutions to monitor third parties' use of nonpublic personal information provided by the institutions. Obligations to do so may arise in other contexts, however. For instance, some of the commenters who requested that the Commission not impose such a duty stated that they have contracts in place that limit what the recipient may do with the information. Also, the limits on reuse as stated in the final rule provide a basis for an action to be brought against an entity that violates those limits.

Redisclosure by consumer reporting agencies. Comments regarding the availability of credit header information [35] from consumer reporting agencies addressed not only the reuse and redisclosure provisions, but also the definition of nonpublic personal information (*see* § 313.3(n, o, p) above), the exception in § 313.15(a)(5), and the operation of the Fair Credit Reporting Act (*see* § 313.16 below). For clarity, the Commission addresses the credit header issue here, with reference as appropriate to other provisions of the final rule.

The definition of nonpublic personal information dictates that all of the information a financial institution provides to a consumer reporting agency is nonpublic personal information: ''Any list, description or other grouping of consumers (*and publicly available information pertaining to them*) that is derived using any personally identifiable financial information * * *.'' (§ 313.3(n)(1)(ii)(emphasis added).) The financial institution is permitted under § 313.15(a)(5) to disclose this nonpublic personal information, without giving the consumer notice and the opportunity to opt out, ''[t]o a consumer reporting agency * * *.'' That same exception states that the notice and opt out provisions do not apply to nonpublic personal information ''from a consumer report reported by a consumer reporting agency.''

The Commission recognizes that § 313.15(a)(5) permits the continuation of the traditional consumer reporting business, whereby financial institutions report information about their consumers to the consumer reporting agencies and the consumer reporting agencies, in turn, disclose that information in the form of consumer reports to those who have a permissible purpose to obtain them. Despite a contrary position expressed by some commenters, this exception does not allow consumer reporting agencies to redisclose the nonpublic personal information it receives from financial institutions other than in the form of a consumer report. Therefore, the exception does not operate to allow the disclosure of credit header information to individual reference services, direct marketers, or any other party that does not have a permissible purpose to obtain that information as part of a consumer report.[36]

Disclosure by a consumer reporting agency of the nonpublic personal information it receives from a financial institution pursuant to the exception, other than in the form of a consumer report, is governed by the limitations on reuse and redisclosure in § 313.11, discussed above in ''Limits on reuse.'' Those limitations do not permit consumer reporting agencies to disclose credit header information that they received from financial institutions to nonaffiliated third parties. Some commenters suggested that the information loses its status as ''nonpublic personal information'' when the consumer reporting agencies combine it with other information in their databases. The Commission does not agree. The information is disclosed to the consumer reporting agencies as nonpublic personal information and it retains that status regardless of how the consumer reporting agency stores or rediscloses that data.

Several commenters stated that the Fair Credit Reporting Act operates to allow consumer reporting agencies to disclose credit header information and, therefore, any prohibition on the sale of credit header information violates section 506 of the G–L–B Act, which states that ''nothing in [Title V of the G-L-B Act] shall be construed to modify, limit, or supercede the operation of the [FCRA].'' The Commission does not agree. To the extent credit header information is not a consumer report, it is not regulated by the FCRA and a prohibition on its disclosure by a consumer reporting agency consistent with the statutory scheme of the G-L-B Act in no way modifies, limits or supercedes the operation of the FCRA.[37]

At least one commenter requested that the Commission make use of the authority granted to it under section 504(b) of the G-L-B Act to provide for an exception to the reuse and redisclosure limitations that would allow consumer reporting agencies to sell credit header information. The Commission does not believe that such an exception is consistent with the privacy provisions of the Act, which function to protect a consumer's nonpublic personal information from widespread distribution without notice and the opportunity for the consumer to opt out. An exception that allows a consumer reporting agency to redisclose that information where there has been no notice to the consumer and no opportunity for the consumer to direct that the information not be disclosed works at cross purposes with the Act. The Commission, therefore, declines to adopt such an exception.

If consumer reporting agencies receive credit header information from financial institutions outside of an exception, the limitations on reuse and redisclosure may allow them to continue to sell that information. This could occur if the originating financial institutions disclose in their privacy policies that they share consumers' nonpublic personal information with consumer reporting agencies, and provide consumers with the opportunity to opt out. Then, like any other nonaffiliated third party that receives information outside of an exception, the consumer

[35] ''Credit header'' information was traditionally defined to include identifying information such as name, address, telephone number, social security number, mother's maiden name, and age. However, the Commission's recent decision in *In re Trans Union,* Docket No. 9255 (Feb. 10, 2000), *appeal docketed,* No. 00–1141 (D.C. Cir. Apr. 4, 2000), determined that age is a ''consumer report'' and can be disclosed only pursuant to a permissible purpose under Section 604 of the Fair Credit Reporting Act.

[36] Section 608 of the Fair Credit Reporting Act does allow consumer reporting agencies to furnish a consumer's name, address, former addresses, places of employment, and former places of employment to a governmental agency.

[37] To the extent that previously-considered credit header information is now deemed consumer report information (*i.e.,* age), the FCRA provides requirements and protections in addition to those provided under the G-L-B Act.

reporting agency can redisclose that information consistent with the originating financial institutions' privacy policies and subject to applicable consumer opt out directions.

Section 313.12 Limits on Sharing Account Number Information for Marketing Purposes.

Section 502(d) of the G-L-B Act prohibits a financial institution from disclosing, ''other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.'' Proposed § 313.13 applied this statutory prohibition to disclosures made directly or indirectly by a financial institution and sought comment on whether one or more exceptions to the flat prohibition should be created.

The Commission received many comments from people who suggested that various exceptions be created, as well as people who believe that a flat prohibition is necessary to protect consumers from unscrupulous practices. After considering the suggestions from all of the commenters addressing this issue, the Commission has decided, pursuant to its authority under 504(b), to modify proposed § 313.13 by (a) adding two exceptions that allow financial institutions to engage in legitimate, routine business practices and that are unlikely to pose a significant potential for abuse and (b) clarifying that the prohibition does not apply in two circumstances frequently mentioned in the comments. These exceptions and clarifications are discussed below.

Disclosures to a financial institution's agent or service provider. Many financial institutions noted that they use agents or service providers to conduct marketing on the institution's behalf. This might occur, for instance, when a mortgage lender instructs a service provider that assists in the delivery of monthly statements to include a ''statement stuffer'' with the statement informing consumers about a financial product or service offered by the institution. The Commission recognizes the need to disclose account numbers in this instance, and believe that there is little risk to the consumer presented by such disclosure.

Similarly, the Commission recognizes that a financial institution may use agents to market the institution's own financial products and services. Commenters advocating that the final rule exclude disclosures to agents stated that the agents effectively act as the financial institution in the marketing of the institution's financial products and services. These commenters suggested that there was no more reason to preclude sharing the account numbers with an agent hired to market the institution's financial products and services than there would be to preclude sharing between two departments of the same institution. The Commission is concerned, however, about the possibility of transactions being consummated by a financial institution's agent who may be engaging in practices contrary to the institution's instructions. While the Commission recognizes that a financial institution frequently will use agents to assist it in marketing its products, a consumer's protections are potentially eroded by allowing agents to have access to a consumer's account. Accordingly, an exception in § 313.12(b)(1) will permit disclosures of account numbers by a financial institution to an agent for the purpose of marketing the financial institution's financial product or services, but has qualified that exception by stating that the agent has no authority to make charges to the account.

Private label credit cards and affinity programs. Many commenters stated that the final rule should not prevent the disclosure of account numbers in the situation where a consumer chooses to participate in a private label credit card program or other affinity program. Under these programs, a consumer typically will be offered certain benefits, often by a retail merchant, in return for using a credit card that is issued by a particular financial institution. The commenters suggested that, in the example of an affinity program, the consumer understands the need for the merchant and financial institution to share the consumer's account number. The Commission agrees that this type of disclosure is appropriate and does not create a significant risk to the consumer. Accordingly, § 313.12(b)(2) has been added to the final rule to exclude the sharing of account numbers where the participants are identified to the consumer at the time the consumer enters into the program.

Encrypted numbers. Many commenters urged the Commission to exercise its exemptive authority to permit the transmission of account numbers in encrypted form. Several commenters noted that encrypted account numbers and other internal identifiers of an account are frequently used to ensure that a consumer's instructions are properly executed and that the inability to continue using these internal identifiers would increase the likelihood of errors in processing a consumer's instructions. These commenters also point out that if internal identifiers may not be used, a consumer would need to provide an account number in order to ensure proper handling of a request, which would expose the consumer to a greater risk than would the use of an internal tracking system that preserves the confidentiality of a number that may be used to access the account.

The Commission believes an encrypted account number without the key is something different from the number itself and thus falls outside the prohibition in section 502(d). In essence, it operates as an identifier attached to an account for internal tracking purposes only. The statute, by contrast, focuses on numbers that provide *access* to an account. Without the key to decrypt an account number, an encrypted number does not permit someone to access an account.

In light of the statutory focus on access numbers, and given the demonstrated need to be able to identify which account a financial institution should debit or credit in connection with a transaction, the Commission has included a clarification in § 313.12(c)(1) of the final rule stating that an account number, or similar form of access number or access code, does not include a number or code in an encrypted number form, as long as the financial institution does not provide the recipient with the means to decrypt the number. Consumers will be adequately protected by disclosures of encrypted account numbers that do not enable the recipient to access the consumer's account.

Definition of ''transaction account.'' Several commenters suggested that the final rule clarify that accounts to which no charge may be posted are not covered by the prohibition against disclosing account numbers. These commenters frequently cited mortgage loan accounts as typical of those that should fall outside the scope of the prohibition. The Commission agrees with the principle behind these suggestions. However, there have been instances in which a borrower's monthly payments on a mortgage loan have been increased in connection with the marketing of a financial product or service without the borrower's knowledge or permission. Accordingly, the final rule clarifies in § 313.12(c)(2) that a transaction account is an account, other than a deposit account or a credit card account, to which third parties can initiate charges.

If it would be possible, for instance, for a third party marketer to initiate a charge to a mortgage loan account, then the final rule would prohibit the disclosure of that account number to the marketer.

Section 313.13 Exception To Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b) of the G-L-B Act creates an exception to the opt out rule for the disclosure of information to a nonaffiliated third party for use by the third party to perform services for, or functions on behalf of, the financial institution, including the marketing of the financial institution's own products or services or financial products or services offered pursuant to a joint agreement between two or more financial institutions. A consumer will not have the right to opt out of disclosing nonpublic personal information about the consumer to nonaffiliated third parties under these circumstances, if the financial institution ''fully discloses'' to the consumer that it will provide this information to the nonaffiliated third party before the information is shared and enters into a contract with the third party that requires the third party to maintain the confidentiality of the information. As noted in the proposed rule, this contract should be designed to ensure that the third party (a) will maintain the confidentiality of the information at least to the same extent as is required for the financial institution that discloses it, and (b) will use the information solely for the purposes for which the information is disclosed or as otherwise permitted by §§ 313.10 and 313.11 of the proposed rule. The Commission invited comment on whether the statute would prohibit the sharing of aggregate data without personal identifiers and whether additional requirements should be imposed on the agreements to address, for instance, reputation risk and legal risk for a financial institution entering into such an agreement.

The majority of the comments on this exception expressed concern that routine servicing agreements between a financial institution and, for instance, a loan servicer would be subject to the requirements of proposed § 313.9, which appears as § 313.13 in the final rule. These commenters consistently pointed out that section 502(e) of the G-L-B Act contains several exceptions for the sharing of information by a financial institution that is necessary to permit a third party to perform services for a financial institution. The commenters requested clarification that disclosures made pursuant to one of the section 502(e) exceptions are not subject to the requirements imposed on disclosures made pursuant to section 502(b)(2) of the G-L-B Act. The Commission agrees that when a disclosure may be made under section 502(e), the Act permits that disclosure without first complying with the requirements of section 502(b)(2).

A related issue is whether a financial institution must satisfy the disclosure obligations of section 502(b)(2) and have a confidentiality agreement in the case of a service provider that is performing an activity governed by section 502(b)(2) (*i.e.,* those that are not covered by one of the section 502(e) exceptions). Several commenters maintained that those requirements apply only to joint marketing agreements and that it is illogical to impose a set of requirements on disclosures to the section 502(b)(2) service providers when no such requirements are imposed on the section 502(e) service providers. The Commission believes, however, that a plain reading of section 502(b)(2) leads to that result.[38] The Commission reads the phrase ''if the financial institution fully discloses * * *'' as used in section 502(b)(2) as modifying the phrase ''[t]his subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, * * *'' The Commission thus has concluded that any disclosure to a service provider not covered by section 502(e) must satisfy the disclosure and written contract requirements of section 502(b)(2).

Several other commenters addressed the question of whether the rule should include safeguards beyond those provided by the statute to protect a financial institution from the risks that can arise from agreements with third parties. Most suggested that safety and soundness concerns were more appropriately addressed in a forum other than a rule designed to protect consumers' financial privacy. Others opined that financial institutions did not need the rule to mandate certain protections on their behalf. The Commission has concluded that the protections set out in the statute, as implemented by § 313.13(a)(1)(ii), are adequate for purposes of the privacy rule. Those protections require a financial institution to provide the initial notice required by § 313.4 of the final rule as well as enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the financial institution disclosed the information, including use under an exception in §§ 313.14 or 313.15 in the ordinary course of business to carry out those purposes. These limitations will preclude recipients from sharing a consumer's nonpublic personal information pursuant to a chain of third party joint marketing agreements.

Several commenters asked whether a financial institution would have to modify existing contracts with third parties to comply with the rule. The Commission believes that a balance must be struck that minimizes interference with existing contracts while preventing evasions of the regulation. To achieve these goals, the final rule states, in § 313.18(c), that contracts in effect as of July 1, 2000 must be brought into compliance with the provisions of § 313.13 by July 1, 2002. For the reasons expressed above, the Commission has adopted the provisions that were set out in § 313.9 of the proposal, with the changes noted above, as § 313.13 of the final rule.

Section 313.14 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

As previously discussed, section 502(e) of the G-L-B Act creates exceptions to the requirements that apply to the disclosure of nonpublic personal information to nonaffiliated third parties. Paragraph (1) of that section sets out certain exceptions for disclosures made, generally speaking, in connection with the administration, processing, servicing, and sale of a consumer's account. Proposed § 313.10 implemented those exceptions by restating them with only stylistic changes that were intended to make the exceptions easier to read. The preamble to that proposed section noted that the exceptions set out in proposed § 313.10 (as well as the exceptions set out in § 313.11 of the proposal) do not affect a financial institution's obligation to provide initial notices of its privacy policies and practices prior to the time it establishes a customer relationship and annual notices thereafter.

[38] Section 502(b)(2) states, in relevant part, that the opt out provision: ''shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including the marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

The Commission received several comments from institutions pointing out that, by deleting the statutory phrase ''in connection with'' from the exceptions for information shared (a) to service or process a financial product or service requested by the consumer or (b) to maintain or service a customer account, the Commission narrowed the application of the exception. The Commission did not intend this result and has changed the final rule accordingly. *See* § 313.14(a).

Several other commenters requested that the final rule specifically state that certain services, such as those provided by attorneys, appraisers, financial planners, and debt collectors (as appropriate), are ''necessary'' to effect, administer, or enforce a transaction, as that term is used in paragraph (a) and defined in paragraph (b) of proposed § 313.10. Others cited examples of entities seeking to verify funds availability or obtain loan payoff information as instances where a disclosure would fall within the exceptions described in proposed § 313.10. The Commission believes that disclosures to these types of professionals and under the circumstances posited by the commenters may be necessary to effect, administer, or enforce a transaction in a given situation. However, the Commission has not listed specific types of disclosures in the regulation as necessarily falling within the scope of the exception because such a general statement could be applied inappropriately to shelter disclosures that, in fact, are not necessary to effect, administer, or enforce a transaction.

Other commenters suggested that the final rule clarify, in situations where a financial institution uses an agent to provide services to a consumer, that the consumer need not have directly requested or authorized the service provider to provide the financial product or service but may request it from the principal instead. The Commission agrees that the communication may be between the consumer and the service provider and notes that the rule governing agents as set out in the definition of ''consumer'' above, provides the flexibility sought by the commenters. Briefly stated, an individual is not a consumer of an entity that is acting as agent for another financial institution in connection with that financial institution's providing a financial product or service to the consumer.

Section 313.15 Other Exceptions to Notice and Opt Out Requirements

As noted above, section 502(e) contains several exceptions to the requirements that otherwise would apply to the disclosures of nonpublic personal information to nonaffiliated third parties. Proposed § 313.11 set out those exceptions for disclosures that are not made in connection with the administration, processing, servicing, and sale of a consumer's account and made stylistic changes to the statutory language intended to clarify the exceptions. The proposal also provided an example of the consent exception in the context of a financial institution that has received an application from a consumer for a mortgage loan informing a nonaffiliated insurance company that the consumer has applied for a loan. The Commission invited comment on whether safeguards should be added to the exception for consent in order to minimize the potential for consumer confusion.

Several commenters responded to the request for comment on whether the consent exception should include safeguards, such as a requirement that the consent be written, be indicated by a signature on a separate line, or automatically terminate after a certain period of time. Of these, some favored the additional safeguards discussed in the proposal, while others maintained that such precautions are unnecessary. Several suggested that the consent exception include a provision noting that participation in a program where a consumer receives ''bundled'' products and services (such as would be the case, for instance, in an affinity program) necessarily implies consent to the disclosure of information between the entities that provide the bundled products or services. Others suggested that certain terms and conditions be imposed on any consent agreement, such as a time by which the financial institution must stop disclosing nonpublic personal information once a consent is revoked.

The Commission has declined to elaborate on the requirements for obtaining consent or the consumer safeguards that should be in place when a consumer consents. The resolution of this issue is appropriately left to the particular circumstances of a given transaction. Any financial institution that obtains the consent of a consumer to disclose nonpublic personal information should take steps to ensure that the limits of the consent are well understood by both the financial institution and the consumer. If misunderstandings arise, consumers may have means of redress, such as in situations when a financial institution obtains consent through a deceptive or fraudulent practice. Moreover, a consumer may always revoke his or her consent. In light of the safeguards already in place, the Commission has decided not to add safeguards to the consent exception.

Many commenters offered specific suggestions for additional exceptions or amendments to the proposed exceptions. In many cases, the suggestions are accommodated elsewhere in the regulation (such as is the case, for instance, for exceptions to permit (a) verification of available funds or (b) disclosures to or by appraisers, flood insurers, attorneys, insurance agents, or mortgage brokers to effect a transaction). In other cases, the suggestions are inconsistent with the statute (as is the case, for instance, with one commenter's suggestion that the Commission completely exempt a financial institution from all of the statute's requirements if the institution makes no disclosures other than what is permitted by section 502(e)). Accordingly, the Commission has retained, in § 313.15, the statement of the exceptions as proposed and invites interested parties to seek clarifications as necessary in their particular circumstance. See 16 CFR pt. 1.

Section 313.16 Protection of the Fair Credit Reporting Act

Section 506 of the G-L-B Act makes several amendments to the FCRA to vest rulemaking authority in various agencies and to restore the Agencies' regular examination authority. Paragraph (c) of section 506 states that, except for the amendments noted regarding rulemaking authority, nothing in Title V of the G-L-B Act is to be construed to modify, limit, or supersede the operation of the FCRA, and no inference is to be drawn on the basis of the provisions of Title V whether information is transaction or experience information under section 603 of the FCRA. Proposed § 313.14 implemented section 506(c) of the G-L-B Act by restating the statute, making only minor stylistic changes intended to make the rule clearer.

Comments about this provision focused mainly on whether the Commission, by requiring annual notice of a consumer's right to opt out under the FCRA, was modifying, limiting, or superseding the operation of the FCRA. For the reasons explained in the discussion of § 313.6, above, the annual disclosure mandated by the G-L-B Act does not affect the obligations imposed by the FCRA.

Other commenters suggested that this section protects the ability of consumer reporting agencies to disclose credit header information to unaffiliated third parties. As discussed in § 313.11 above, the Commission disagrees with this position. Finally, at least one commenter requested that the Commission specifically reference provisions of the Fair Credit Reporting Act that are not modified, limited, or superceded by the G-L-B Act. Such an approach is not necessary to implement section 506 of the Act and, therefore, the final rule adopts in § 313.16 the text set out in § 313.14 of the proposal.

Section 313.17 Relation to State Laws

Section 507 of the G-L-B Act states, in essence, that Title V does not preempt any State law that provides greater protections than are provided by Title V. Determinations of whether a State law or Title V provides greater protections are to be made by the Commission after consultation with the agency that regulates either the party filing a complaint or the financial institution about which the complaint was filed, and may be initiated by any interested party or on the Commission's own motion. The Act does not require such determinations for consistent state laws. Some commenters suggested that the Commission lacks the authority to consider preemption issues with respect to the rule, but only with respect to the Act. The Commission disagrees with the analysis. Any determination of whether a state law provides greater protection than the Act will necessarily require consideration of the rules that implement the Act.

Comments on this section ranged from those who suggested that federal law should preempt state law in every case where there is a conflict to those who encouraged the Commission to support the rights of states to enact greater protections. Some requested clarification of whether a particular state law would be considered more restrictive, while others suggested that the Commission establish in the final rule a choice of law principle for financial institutions operating in more than one state. These and other suggestions exceed the scope of this rulemaking and are better addressed, to the extent practicable, in the context of a preemption determination. Accordingly, the Commission has adopted in § 313.17 the text set out in proposed § 313.15.

Section 313.18 Effective Date; Transition Rule

Section 510 of the G-L-B Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed, *i.e.,* November 13, 2000. However, section 510(1) authorizes the Commission to prescribe a later date in the rule enacted pursuant to section 504. The proposed rule sought comment on the effective date prescribed by the statute. It also would have required that financial institutions provide initial notices, within 30 days of the effective date of the final rule, to people who were customers as of the effective date. The preamble to the proposed rule noted that a financial institution would have to provide opt out notices before the rule's effective date if the institution wanted to continue sharing nonpublic personal information with nonaffiliated third parties without interruption.

The overwhelming majority of commenters addressing this provision requested additional time to comply with the final rule. Commenters stated that six months would not be sufficient to take the steps needed to comply with the regulation, including preparing new disclosure forms, developing software needed to track opt outs, training employees, creating management oversight systems, and undergoing internal examination and auditing to ensure compliance. Several commenters suggested that it would be less effective and potentially more confusing for consumers to receive several notices all around the end of the year 2000 than it would be for the notices to be delivered during a rolling phase-in. Others noted that the proposed effective date would place a severe strain on financial institutions at a time when other year-end notices need to be prepared and delivered. Several commenters noted that financial institutions have not budgeted for the expenses in the current year that likely will be incurred. They also noted that the disclosures regarding the standards to be followed to protect customers' records have not been proposed for comment, thereby making it impossible for financial institutions to know how to prepare at least that part of the initial privacy notices. Requests for extensions of the effective date typically ranged from 12 months to 24 months from publication of the rule.

Many commenters also stated that a 30-day phase-in for initial notices to existing customers is not feasible, given the large number of notices, the short period of time allowed, and the competing demands on financial institutions at the time when the initial notices must be sent. A few suggested that the rule require initial notices to be sent only to people who establish customer relationships after the effective date of the rule and allow a financial institution to send annual notices to existing customers at some point during the next 12 months and annually thereafter.

The Commission agrees that six months may be insufficient in certain instances for a financial institution to ensure that its forms, systems, and procedures comply with the rule. In order to accommodate situations requiring additional time, the Commission has retained the effective date of November 13, but, consistent with its authority under section 510(1) of the G-L-B Act to extend the effective date, the Commission will give financial institutions until July 1, 2001 to be in full compliance with the regulation. Financial institutions are expected, however, to begin compliance efforts promptly, to use the period prior to June 30, 2001 to implement and test their systems, and to be in full compliance by July 1, 2001. Because financial institutions will have slightly over 13 months in which to comply with the rule, there no longer is any need for a separate phase-in for providing initial notices. Thus, a financial institution will need to deliver all required opt out notices and initial notices before July 1, 2001. This extension represents a fair balance between those seeking prompt implementation of the protections afforded by the statute and those concerned about the reliability of the systems that are put in place.

Financial institutions are encouraged to provide disclosures as soon as practicable. Institutions that do not disclose nonpublic personal information to third parties have fewer burdens under the rule (both in terms of notice requirements and opt out mechanism) and should therefore be able to provide privacy notices to their consumers more expeditiously. Depending on the readiness of an institution to process opt out elections, institutions might wish to consider including the privacy and opt out notices in the same mailing as is used to provide tax information to consumers in the first quarter of 2001 so that consumers are less likely to overlook the notices.

The Commission has concluded that the extension of the date by which financial institutions must be in full compliance provides much of the relief sought by those who suggested that initial notices should not be required for existing customers. By allowing financial institutions to deliver notices over a significantly longer period of time than was proposed, the concentrated burden that would have been imposed by the proposed rule is avoided. Accordingly, the Commission

has decided not to adopt the suggestion that initial notices be required only for new customers after the effective date of the rule. Initial notices need not be given to customers whose relationships have terminated prior to the date by which institutions must be in compliance with the rule. Thus, if an account is inactive according to a financial institution's policies before July 1, 2001, then no initial notice would be required in connection with that account. However, because these former customers would remain consumers, a financial institution would have to provide a privacy and opt out notice to them if the financial institution intended to disclose their nonpublic personal information to nonaffiliated third parties beyond the exceptions in §§ 313.14 and 313.15.

The Commission notes that full compliance with the rule's restrictions on disclosures is required on July 1, 2001. To be in full compliance, institutions must have provided their existing customers with both a privacy notice and a reasonable amount of time to opt out prior to that date. If these have not been provided, the disclosure restrictions will apply. This means that a financial institution would have to cease sharing customers' nonpublic personal information with nonaffiliated third parties on that date, unless it may share the information pursuant to an exception under §§ 313.14 or 313.15. However, financial institutions that both provide the privacy notice and allow a reasonable period of time to opt out before July 1, 2001 may continue to share nonpublic personal information after that date about customers who do not opt out.

The Commission's final rule provides for an exception to the effective date to take into consideration the Board's authority to add activities that are permissible for financial holding companies to engage in. The Board's addition of permissible activities (''subsequent permissible activities'') will cause some entities that are not now financial institutions to come within the definition at a later date. The exception provides that the rule is not effective as to any entity engaging in subsequent permissible activities until the Commission so determines.

The Board has the authority to allow financial holding companies to engage in activities that are financial in nature, activities that are incidental to financial activities, and activities that are complementary to financial activities. If the Board, therefore, issues an order or regulation identifying the activity that the financial holding company may engage in without characterizing that activity, the Commission will have to determine whether any entities engaging in such activity should be covered by the privacy provisions of the G-L-B Act and, if so, to what extent. The Commission intends to publish for notice and comment its proposals with respect to entities engaging in subsequent permissible activities.

Appendix A—Sample Clauses

In order to provide additional guidance to financial institutions concerning the level of detail the Commission believe is appropriate under the statute, the Commission has set forth a variety of sample clauses for financial institutions to consider. The Commission urges financial institutions to carefully review whether these clauses accurately reflect a given institution's policies and practices before using the clauses. Financial institutions are free to use different language and to include as much additional detail as they think is appropriate in their notices.

Derivation Chart

Below is a chart showing the derivation of the sections in the final privacy rule from the proposal. Only changes are noted.

Proposal	Content of provision	Final rule
4(d)	How to provide initial notice	9(a)
N/A	New product for existing customer	4(d)
4(d)(3)	Oral delivery (privacy notice)	9(d)
4(d)(4)	Retainable notice	9(e)
N/A	Joint relationships (privacy notice)	4(f)
5(b)	How to provide annual notice	9(a) and (c)
5(c)	Terminated customer relationships	5(b)
N/A	Delivering short-form initial notices	6(d)(3)
7	Main operative provision	10
8(a)	Opt out methods; opt out notice content	7(a)
8(b)(1)	How to deliver opt out notices	9(a)
8(b)(2)	Oral delivery (opt out notice)	9(d)
8(b)(3)	Same form as initial notice	7(b)
8(b)(4)	Initial notice must accompany opt out notice	7(c)
N/A	Joint relationships (opt out notice)	7(d)
8(d)	Time to comply with opt out; continuing right to opt out	7(e) and (f)
8(e)	Duration of opt out	7(g)
8(c)(1)	Revised notices	8(a)
8(c)(2)	How to deliver revised notice	8(c)
8(c)(3)	Examples of when revised notice is required	8(b)
9	Exception for service providers and joint marketers	13
10	Exceptions for processing and servicing transactions	14
11	Other exceptions	15
12	Redisclosure and reuse	11
13	Sharing account number information	12
14	FCRA	16
15	State law	17
16	Effective date	18

Section D. Guidance for Certain Institutions

To minimize the burden and costs to a financial institution (''you'') and generally clarify the operation of the final rule, the Agencies have included this guidance that you may use in conjunction with the sample clauses in Appendix A. This guidance specifically applies to you if you:

(1) do not have any affiliates;

(2) only disclose nonpublic personal information to nonaffiliated third

parties in accordance with an exception under §§ 313.14 or 313.15, such as in connection with servicing or processing a financial product or service that a consumer requests or authorizes ; and

(3) do not reserve the right to disclose nonpublic personal information to nonaffiliated third parties, except under §§ 313.14 and 313.15. [39]

In addition, if you disclose nonpublic personal information in accordance with the exception in § 313.13 for service providers and joint marketers, you also must include an accurate description of that information, as illustrated by the sample clause in section *(K)* below.

In general, if you disclose nonpublic personal information to nonaffiliated third parties only as authorized under an exception, then your only responsibilities under the regulation are to provide initial and annual notices to each of your customers. You do not need to provide an opt out notice or opt out rights to your customers.

A. Initial notice to customers. You must provide an initial notice to each of your customers. A customer is a natural person who has a continuing relationship with you, as described in § 313.4(c). For instance, a ''pay day'' lender who extends a loan to an individual has a customer relationship with that individual. By contrast, if the ''pay day'' lender only cashes a check for that individual, there is no customer relationship; even if that individual repeatedly cashes checks with the same pay-day lender, she remains only the lender's consumer. In other words, you must provide initial and annual notices to each of your customers, but not to others.

B. Time to provide initial notice. You must provide an initial privacy notice to each of your customers not later than when you establish a customer relationship (§ 313.4(a)(1)). For instance, you must provide a privacy notice to an individual not later than when that individual executes the contract to open a checking account. Thus, you can provide the notice to a checking account customer together with the account agreement and signature card.

Similarly, in the case of extending a mortgage loan, you must provide a privacy notice to an individual not later than when you and the individual enter into an agreement that you will serve as the mortgage lender. For example, you can provide the notice to an individual together with the documents (or other forms) that constitute the contract to extend the loan. You may always deliver your privacy notices earlier than required.

If one of your existing customers obtains a new financial product or service from you, then you need not provide another initial notice to that customer (§ 313.4(d)) if that earlier notice covered the subsequent product.

For instance, if Alison Individual enters Lender's offices for the first time on July 2, 2001 to obtain a mortgage, then Lender complies with § 313.4(a)(1) of the rule if it provides an initial notice to Alison with the mortgage agreement. When Alison obtains her mortgage, she becomes a customer of Lender. Alison makes regular payments to Lender on her mortgage and, two years later, returns to Lender to obtain a credit card. If the initial notice that Lender provided to Alison is accurate with respect to the terms of that credit card, then Lender need not provide another initial notice to her when she obtains the credit card because Lender has already provided a notice to Alison that covers that relationship.

C. Method of providing the initial notice. You must provide your initial notice so that each customer can reasonably be expected to receive actual notice of it, in writing (§ 313.9(a)). For example, you may provide the initial notice by mailing a printed copy of it together with a loan contract. Similarly, you may provide the initial notice by hand-delivering a printed copy of it to the customer together with a deposit account agreement.

D. Compliance with initial notice requirement for existing customers by effective date. You must provide an initial notice to each of your current customers not later than July 1, 2001 (§ 313.18(b)). You may do so by mailing a printed copy of the notice to the customer's last known address.

E. Annual notice. During the continuation of the customer relationship, you must provide an annual notice to the customer, as described in § 313.5(a). You must provide an annual notice to each customer at least once in any period of 12 consecutive months during which the customer relationship exists. You may define the 12-consecutive-month period, but must consistently apply that period to the customer. You may define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice.

For example, assume that Lender defines the 12-consecutive-month period as a calendar year and provides annual notices to all of its customers on October 1 of each year. If Alison Individual obtained her mortgage with Lender on July 2, 2001, thereby becoming a customer, then Lender must provide an initial notice to Alison together with the mortgage agreement or earlier. Lender must provide an annual notice to Alison by December 31, 2002. If Lender provides an annual notice to Alison on October 1, 2002, as it does for other customers, then it must provide the next annual notice to Alison not later than October 1, 2003.

F. Method of providing the annual notice. Like the initial notice, you must provide the annual notice so that each customer can reasonably be expected to receive actual notice of it, in writing (§ 313.9(a)). You may do so by mailing a printed copy of the notice to the customer's last known address.

G. Joint accounts. If two or more customers jointly obtain a financial product or service, then you may provide one initial notice to those customers jointly. Similarly, you may provide one annual notice to those customers jointly (§ 313.4(f)).

H. Information described in the initial and annual notices. The initial and annual notices must include an accurate description of the following four items of information:

(a) The categories of nonpublic personal information that you collect (§ 313.6(a)(1));

(b) The fact that you do not disclose nonpublic personal information about your current customers to affiliates or nonaffiliated third parties, except as authorized by §§ 313.14 and 313.15 (§ 313.6(a)(2)–(3), (9)). When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law (§ 313.6(b));

(c) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers (§ 313.6(a)(4));

(d) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information (§ 313.6(a)(8)).

For each of these four items of information above, you may use a sample clause from Appendix A. The Agencies emphasize that you may use a sample clause only if that clause

[39] If you disclose or reserve the right to disclose nonpublic personal information to a nonaffiliated third party under other circumstances, you must comply with other provisions in the rule, notably §§ 313.7, 313.8, and 313.13, if applicable. If you disclose or reserve the right to disclose nonpublic personal information to an affiliate you must comply with other provisions in the rule, notably § 313.6(a)(7), as applicable.

accurately describes your actual policies and practices.

I. Example of notice. A financial institution (''Lender'') that (i) does not have any affiliates and (ii) only discloses nonpublic personal information to nonaffiliated third parties as authorized under §§ 313.14 and 313.15, may comply with the requirements of § 313.6 of the rule by using the following notice, if applicable.

Lender collects nonpublic personal information about you from the following sources:

- *Information we receive from you on applications or other forms;*
- *Information about your transactions with us or others; and*
- *Information we receive from a consumer reporting agency.*[40]

We do not disclose any nonpublic personal information about you to anyone, except as permitted by law.

If you decide to pay off your loan(s), we will adhere to the privacy policies and practices as described in this notice.

Lender restricts access to your personal and account information to those employees who need to know that information to provide products or services to you. Lender maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

J. Initial and annual notices must be clear and conspicuous. The Commission emphasizes that you must ensure that both the initial and annual notices are clear and conspicuous, as defined in § 313.3(b).

K. Example of notice for disclosure to service providers and joint marketers. If you disclose nonpublic personal information in accordance with the exception in § 313.13, for service providers and joint marketers, you also must include an accurate description of that information. You may comply with the requirements of § 313.13 of the rule by including the following sample clause, if applicable, in the example of notice described in section (*I*) above:

We may disclose all of the information we collect, as described [describe location in the notice, such as ''above'' or ''below'], to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

[40] You only need to describe those general categories that apply to your policies and practices. Accordingly, if you do not collect information from ''a consumer reporting agency,'' for instance, then you need not describe that category in your notices.

Section E. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) (''RFA'') requires, subject to certain exceptions, that federal agencies prepare an initial regulatory flexibility analysis (''IRFA'') with a proposed Rule and a final regulatory flexibility analysis (''FRFA'') with a final Rule, unless the agency certifies that the Rule will not have a significant economic impact on a substantial number of small entities. At the time the proposed Rule was issued, the Commission believed that the G-L-B Act's requirements accounted for most, if not all, of the economic impact of the Rule, but decided to publish the IRFA to ensure that in developing the final Rule it adequately considered the impact on small businesses. After reviewing the comments submitted in response to the proposed Rule, the Commission continues to believe that the burden imposed on small institutions stems primarily from the statute and that certification would be proper. However, in order to assist those entities with comprehending and complying with the final Rule, the Commission has determined that it is appropriate to publish a FRFA analyzing the Rule as a whole and highlighting provisions that will particularly accommodate the needs of small businesses.

This FRFA incorporates the Commissions's initial findings, as set forth in the IRFA; addresses the comments submitted in response to the IRFA; and describes the steps the Commission has taken in the final Rule to minimize the impact on small entities, consistent with the objectives of the G-L-B Act. The Commission is publishing with this part a guide for entities that do not share any nonpublic personal information, a disproportionate number of which are likely to be small businesses. (See Supplementary Information, Section C.) Also, in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Commission will in the near future issue a compliance guide to assist small entities in complying with this rule.

Succinct Statement of the Need for, Objectives of, and Legal Basis for the Rule

The final Rule implements the provisions of Title V, Subtitle A of the G-L-B Act, which addresses consumer privacy. In general, these statutory provisions require financial institutions to provide notice to consumers about the institution's privacy policies and practices, describe the conditions under which financial institutions may disclose nonpublic personal information about consumers to nonaffiliated third parties, and permit consumers to prevent institutions from sharing nonpublic personal information about them with certain non-affiliated third parties by ''opting out'' of that disclosure.

Section 504 of the G-L-B Act requires the Commission to prescribe ''such regulations as may be necessary'' to carry out the purposes of Title V, Subtitle A. In the absence of these regulations, the substantive burdens imposed by the Act (*e.g.,* the notice, information-sharing restrictions, and opt-out requirements) would have become effective and binding upon financial institutions within one year of the enactment of the law. The Commission believes that the final Rule gives the private sector greater certainty and flexibility with respect to compliance with the statute, as well as clearer guidance as to how the Commission will enforce it.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

Determining a precise estimate of the number of small entities that are financial institutions within the meaning of the proposed Rule is not readily feasible. The definition of ''financial institution'' includes any institution the business of which is engaging in a financial activity, as described in section 4(k) of the Bank Holding Company Act, which incorporates by reference the activities listed in 12 CFR 225.28 and 12 CFR 211.5(d). These include lenders, loan brokers and servicers, collection agencies, financial advisors, tax preparers, real estate settlement services, property appraisers, and others. The G-L-B Act does not identify for purposes of the Commission's jurisdiction any specific category of financial institution; section 505(a)(7) vests the Commission with enforcement authority with respect to ''any other financial institution or other person that is not subject to the jurisdiction of any [other] agency or authority [charged with enforcing the statute].'' Jurisdiction is assigned to other agencies with respect to banks, bank holding companies, and their subsidiaries and affiliates; savings associations, federal credit unions, and their subsidiaries; securities brokers and dealers; investment advisers and investment companies; and insurers.

Although the Commission requested comment on these issues, it did not receive a response sufficient to provide a basis for determining the number of small entities subject to the final Rule. In the absence of such information, there is no way to estimate precisely the number of affected entities that share nonpublic personal information with nonaffiliated third parties or that establish customer relationships with consumers and therefore assume greater disclosure obligations.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission incorporates by reference its description of the projected reporting, recordkeeping, and other compliance requirements of the Rule, as set forth in the IRFA. The Commission has not received any comments that necessitate modification of its previous description of projected compliance requirements. Based on the information the Commission submitted to the Office of Management and Budget, which included an estimated average annual burden over the three-year period of clearance of 4.03 million hours and $87.3 million, OMB has approved the final Rule for the related purposes of the Paperwork Reduction Act. (See section F, infra.)

Among the principal obligations that Title V, Subtitle A of the G-L-B Act, as executed by the final Rule, imposes upon financial institutions is the preparation of notices explaining their privacy policies and practices. Institutions are required to provide those notices to consumers as specified in the Rule, and institutions that disclose nonpublic personal information about their consumers to nonaffiliated third parties will be required to provide opt out notices, as well as a reasonable opportunity to opt out of certain disclosures, to their consumers. These institutions will have to develop systems for keeping track of consumers' opt out directions. Some institutions, particularly those that disclose nonpublic information about consumers to nonaffiliated third parties, will likely need the advice of legal counsel to ensure that they comply with the Rule and may also require computer programming changes and additional staff training.

A detailed, section-by-section analysis of the final Rule is set forth above in section B. of the Supplementary Information part of this notice.

Summary of Significant Issues Raised by Public Comments and Description of Steps the Commission Has Taken To Minimize the Significant Economic Impact on Small Entities

The Commission has sought to minimize the burden on all businesses, including small entities, in promulgating this final rule. Although one method of accomplishing this objective would be to adopt a specific exemption for small entities, the G-L-B Act does not authorize the Commission to create exemptions based on an institution's size. Further, the Commission believes that different compliance standards would be inconsistent with the purpose of Title V, which is to offer all consumers some measure of control over the dissemination of the nonpublic personal information that they provide to financial institutions, regardless of the institution's size. As section 501(a) of the Act declares, ''[i]t is the policy of the Congress that *each* financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.'' (Emphasis added).

Notwithstanding its limited authority to accommodate the specific needs of smaller institutions, the Commission has requested and analyzed throughout this rulemaking process information regarding the economic impact of the G-L-B Act's requirements for all financial institutions, including small entities. The proposed rule and the IRFA included a number of questions for public comment regarding the costs associated with complying with the Rule and the impact on small entities. Although the Commission received few comments that specifically addressed the regulatory flexibility analysis, it carefully considered comments concerning the substantive provisions of the Rule.[41] The discussion below reviews some of those key recommendations and corresponding changes adopted in the final Rule that accommodate those suggestions. Many of the steps taken by the Commission will benefit all institutions, regardless of size, while others will especially reduce the regulatory burden for small entities. For a more complete discussion of these changes, see the section-by-section analysis under section C of the Supplementary Information part of this notice.

Effective Date

Subject to section 510 of the G-L-B Act, the relevant provisions of Title V take effect on November 13, 2000. However, section 510(1) authorizes the Commission to prescribe a later date in the regulations enacted pursuant to section 504. The proposed Rule sought comment on the effective date prescribed by the statute. The overwhelming majority of commenters requested additional time to comply with the final rule. Several commenters noted that financial institutions may encounter difficulty managing the expenses and resources required to comply with the final rule as the institution's budget for the current year was established prior to the issuance of the proposed regulation. This may be especially true for small institutions that face already tight budgetary constraints due to heightened competition. In response to these concerns, the Commission has retained the effective date of November 13, 2000 but, consistent with its authority under section 510(1) of the statute, will give financial institutions until July 1, 2001 to be in full compliance with the final Rule. This additional time should reduce compliance costs for institutions by allowing additional time to budget for any necessary expenses and to implement all necessary operational changes required to comply with this Rule.

Examples

Throughout the final Rule, the Commission has included examples of conduct that illustrate ways to comply with particular provisions. As the section-by-section analysis above and the Rule itself explain, these examples are not exclusive, but they should lessen for institutions the burdens imposed by the Rule by clarifying that compliance with an applicable example constitutes compliance with the applicable provision.

Definition of Nonpublic Personal Information

In the proposed rule, the Commission provided two alternatives for defining nonpublic personal information. The

[41] Even if the Commission had the authority to craft exceptions strictly based on the size of institutions, the comments received did not provide the amount, specificity, or consistency of information required to make such targeted policy determinations. For example, the Commission received one comment from a regional department store retailer with an estimated annual volume of $700 million in 1999. This small retail chain stated that approximate mailing costs associated with issuing privacy notices would be $400,000–$500,000, or 4%–5% of its net income. Another commenter estimated that total compliance costs would total $97,400 for an institution with assets of approximately $100 million. Based on these widely disparate projections and scant statistics, an exception applicable to all ''small entities'' would be impracticable and inappropriate.

first, (Alternative A) deemed information as publicly available only if a financial institution *actually obtained* the information from a public source, whereas the second (Alternative B) treated information as publicly available if a financial institution *could* obtain it from such a source. A vast majority of commenters favored Alternative B as significantly less burdensome than Alternative A. In response to these comments, the final Rule adopts a modified version of Alternative B, which is more fully explained in the section-by-section analysis.

Content of Notices

Many commenters interpreted the proposed Rule as mandating lengthy, confusing privacy notices that would offer little benefit to consumers, and asked for clarification with respect to the content of those disclosures. Although the Commission believes that the notice obligations are not unduly burdensome, in the final Rule it has taken a number of steps to clarify the requirements imposed by the G-L-B Act. The final Rule substantially revises the examples of disclosures that would satisfy the Rule, includes sample clauses that might be used, and adds a new provision for ''short-form'' privacy notices to a consumer that does not become a customer, provided the institution gives the consumer an opt out notice and a reasonably convenient method of obtaining a copy of the full privacy notice. It also retains the simplified notice provision for institutions that do not share nonpublic personal information with nonaffiliated third parties, except pursuant to the exceptions set forth in §§ 313.14 and 313.15 of this part. These measures may be particularly helpful to smaller institutions who do not disclose nonpublic personal information except under those and other exceptions in the final Rule.

In addition, the Commission has included with the final Rule sample disclosures that institutions may use to draft their privacy and opt out notices required by this part. As discussed in the section-by-section analysis above, these clauses are provided to convey to institutions the requisite level of detail that these notices must contain. Institutions can also consult the Guide for Certain Financial Institutions (''Guide''). The Guide generally clarifies the operation of the final Rule. It also provides an example of a notice for institutions, including small entities, that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in §§ 313.14 and 313.15. The Guide may be used in conjunction with the sample clauses contained in Appendix A. Like the examples discussed above, the sample disclosures and the Guide are intended to minimize the burden of complying with the final Rule, by reducing, among other costs, the need for legal advice.

Joint Account Holders

Another frequent comment addressed the provision of notice to and effect of opt outs exercised by joint account holders. As the section-by-section analysis describes, the final Rule clarifies that institutions may provide a single notice to joint account holders (unless otherwise requested), with the understanding that a decision to opt out made by one of the joint account holders will, absent a provision to the contrary in the opt out notice, be effective with respect to each of the account holders. By reducing the number of notices that institutions are required to provide, this flexibility will particularly benefit those institutions, including small entities, that do not share nonpublic personal information with nonaffiliated third parties, except pursuant to an exception.

New Notices Not Required for Each New Financial Product or Service

Some commenters expressed concern that the proposed rule may require a new initial notice each time a consumer obtains a new financial product or service. This would be especially burdensome for an institution that adopts a universal privacy policy that covers multiple products and services. To address these concerns and minimize economic burden, the final Rule was clarified to instruct institutions that a new initial notice is not required if the institution has given the customer the institution's initial notice, and that notice remains accurate with respect to the new product or service.

Section F. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.*, the Commission submitted the proposed Rule to the Office of Management and Budget (OMB) for review. The OMB has approved the Rule's information collection requirements.[42] A **Federal Register** notice with a 30-day comment period of soliciting comments on this collection of information was published on March 1, 2000 (65 FR 11174). The Commission did not receive any comments that necessitated modifying its original burden estimates for the Rule's notice requirements.

Section G. Final Rule

List of Subjects in 16 CFR Part 313

Consumer protection, Credit, Data protection, Privacy, Trade practices.

Accordingly, the Commission amends 16 CFR Ch. I, Subchapter C, by adding a new Part 313 to read as follows:

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

Authority: 15 U.S.C. 6801 *et seq.*

§ 313.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution in specified circumstances to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may

[42] The assigned OMB clearance number is 3084–0121.

disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in §§ 313.13, 313.14, and 313.15.

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those ''financial institutions'' and ''other persons'' over which the Federal Trade Commission (''Commission'') has enforcement authority pursuant to Section 505(a)(7) of the Gramm-Leach-Bliley Act. An entity is a ''financial institution'' if its business is engaging in a financial activity as described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates by reference activities enumerated by the Federal Reserve Board in 12 CFR 211.5(d) and 12 CFR 225.28. The ''financial institutions'' subject to the Commission's enforcement authority are those that are not otherwise subject to the enforcement authority of another regulator under Section 505 of the Gramm-Leach-Bliley Act. More specifically, those entities include, but are not limited to, mortgage lenders, ''pay day'' lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, and investment advisors that are not required to register with the Securities and Exchange Commission. They are referred to in this part as ''You.'' The ''other persons'' to whom this part applies are third parties that are not financial institutions, but that receive nonpublic personal information from financial institutions with whom they are not affiliated. Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d–1320d–8. Any institution of higher education that complies with the Federal Educational Rights and Privacy Act (''FERPA''), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution subject to the requirements of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

§ 313.2 Rule of construction.

The examples in this part and the sample clauses in Appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part. For non-federally insured credit unions, compliance with an example or use of a sample clause contained in 12 CFR part 716, to the extent applicable, constitutes compliance with this part. For intrastate securities broker-dealers and investment advisors not registered with the Securities and Exchange Commission, compliance with an example or use of a sample clause contained in 17 CFR part 248, to the extent applicable, constitutes compliance with this part.

§ 313.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or

economic advisory services is a consumer, regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). An institution that is significantly engaged in financial activities is a financial institution.

(2) *Examples of financial institution.*

(i) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(ii) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(iii) An automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(iv) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(v) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines,

is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(vi) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(vii) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(viii) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(ix) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(x) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(xi) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(xii) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§ 313.14 and 313.15 of this part.

(iv) Entities that engage in financial activities but that are not significantly engaged in those financial activities.

(4) *Examples of entities that are not significantly engaged in financial activities.* (i) A retailer is not a financial institution if its only means of extending credit are occasional ''lay away'' and deferred payment plans or accepting payment by means of credit cards issued by others.

(ii) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(iii) A merchant is not a financial institution merely because it allows an individual to ''run a tab.''

(iv) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists*—(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information (that is not publicly available), such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived, in whole or in part, using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has

obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a credit account;

(F) Any information you collect through an Internet ''cookie'' (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples*—(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis*—(A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(q) *You* includes each ''financial institution'' (but excludes any ''other person'') over which the Commission has enforcement jurisdiction pursuant to section 505(a)(7) of the Gramm-Leach-Bliley Act.

Subpart A—Privacy and Opt Out Notices

§ 313.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 313.14 and 313.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 313.14 and 313.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a customer relationship with a consumer when you originate a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchase insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services, or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer's on-line financial accounts at your Web site.

(ii) *Examples of loan rule.* You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer and retain the servicing rights; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under § 313.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if you acquire a customer's loan, or the servicing rights, from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as through a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 313.9. If you use a short-form initial notice for non-customers according to § 313.6(d), you may deliver your privacy notice according to § 313.6(d)(3).

§ 313.5 Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special rule for loans in § 313.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 313.9.

§ 313.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§ 313.4, 313.5, and 313.8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 313.14 and 313.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 313.14 and 313.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 313.13 (and no exception under §§ 313.14 or 313.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 313.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 313.14 and 313.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 313.4 and 313.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other

nonaffiliated third parties as permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*—(i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list them using the following categories, as applicable, and a few applicable examples to illustrate the significant types of third parties covered in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents.

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 313.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 313.14 and 313.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*—(1) You may satisfy the initial notice requirements in §§ 313.4(a)(2), 313.7(b), and 313.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 313.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 313.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 313.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this part.

§ 313.7 Form of opt out notice to consumers; opt out methods.

(a) (1) *Form of opt out notice.* If you are required to provide an opt out notice under § 313.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in § 313.6(a) (2) and (3) and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form that includes the address to which the form should be mailed; or

(C) Provide an electronic means to opt out, such as a form that can be sent via

electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 313.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 313.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships*—(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5)(ii)of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint credit card account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so,

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction*—(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 313.9.

§ 313.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 313.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) the consumer does not opt out.

(b) *Examples*—(1) Except as otherwise permitted by §§ 313.13, 313.14, and 313.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 313.9.

§ 313.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not,* however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish

advertisements of your privacy policies and practices;

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers*—(1) For customers only, you must provide the initial notice required by § 313.4(a)(1), the annual notice required by § 313.5(a), and the revised notice required by § 313.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§ 313.4(a), 313.5(a), and 313.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

Subpart B—Limits on Disclosures

§ 313.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 313.4;

(ii) You have provided to the consumer an opt out notice as required in § 313.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 313.13, 313.14, and 313.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a money order by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information*—(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 313.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 313.14 or 313.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 313.14(a), you may disclose that information under any exception in § 313.14 or 313.15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 313.14 or 313.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § 313.14 and 313.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 313.14 or 313.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 313.14 or 313.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 313.14 or 313.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 313.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 313.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 313.7 and 313.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 313.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 313.14 or 313.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 313.14 or 313.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 313.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 313.4(a)(2), for the opt out in §§ 313.7 and 313.10, and for service providers and joint marketing in § 313.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law;

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 313.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 313.4(a)(2), for the opt out in §§ 313.7 and 313.10, and for service providers and joint marketing in § 313.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 313.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 313.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 313.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Commission on its own motion or upon the petition of any interested party, after consultation with the applicable federal functional regulator or other authority.

§ 313.18 Effective date; transition rule.

(a) *Effective date.* (1) *General rule.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the Commission has extended the time for compliance with this part until July 1, 2001.

(2) *Exception.* This part is not effective as to any institution that is significantly engaged in activities that the Federal Reserve Board determines, after November 12, 1999, (pursuant to its authority in Section 4(k)(1–3) of the Bank Holding Company Act), are activities that a financial holding company may engage in, until the Commission so determines.

(b)(1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 313.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that

date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 313.13(a)(1) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the contract on or before July 1, 2000.

Appendix A to Part 313—Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets and income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of Information You Collect (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of Information You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 313.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15.

Sample Clause A–2, Alternative 1

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets, and income''*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions, and credit card usage''*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–2, Alternative 2

We may disclose all of the information that we collect, as described [*describe location in the notice, such as ''above'' or ''below''*].

A–3—Categories of Information You Disclose and Parties to Whom You Disclose (Institutions That Do Not Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirements of §§ 313.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§ 313.14, and 313.15.

Sample Clause A–3

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of Parties to Whom You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15, as well as when permitted by the exceptions in §§ 313.14, and 313.15.

Sample Clause A–4

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as ''mortgage bankers, securities broker-dealers, and insurance agents''*];
- Non-financial companies, such as [*provide illustrative examples, such as ''retailers, direct marketers, airlines, and publishers''*]; and
- Others, such as [*provide illustrative examples, such as ''non-profit organizations''*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service Provider/Joint Marketing Exception

You may use one of these clauses, as applicable, to meet the requirements of § 313.6(a)(5) related to the exception for service providers and joint marketers in § 313.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets, and income''*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions, and credit card usage''*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–5, Alternative 2

We may disclose all of the information we collect, as described [*describe location in the notice, such as ''above'' or ''below''*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of Opt Out Right (Institutions that Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 313.13, 313.14, and 313.15.

Sample Clause A–6

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as ''call the following toll-free number: (insert number)''*].

A–7—Confidentiality and Security (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as ''those employees who need to know that information to provide products or services to you''*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

By direction of the Commission.

Approved by the Commission on May 12, 2000.

Donald S. Clark,

Secretary.

[FR Doc. 00–12755 Filed 5–23–00; 8:45 am]

BILLING CODE 6750–01–P

Federal Register

Wednesday,
May 24, 2000

Part IV

Environmental Protection Agency

40 CFR Parts 180, 185 and 186
Consolidation of Certain Food and Feed Additive Tolerance Regulations; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300756; FRL–6043–1]

RIN 2070–AB78

Consolidation of Certain Food and Feed Additive Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule transfers certain of the pesticide food and feed additive regulations that are now in 40 CFR parts 185 and 186 to part 180. EPA is consolidating these regulations because as a matter of law all of pesticide tolerances are now considered to be regulated under section 408 of the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act (Pub. L. 104–17) and they no longer need to be separate. EPA is also amending 40 CFR 180.1 by adding a definition for the term ''food commodity.''

EFFECTIVE DATE: This final rule is effective on May 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail, Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-9368; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300756. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. ''Good Cause'' Finding

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule contains technical, non-substantive amendments to 40 CFR. This rule transfers certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180. There are no changes to the tolerances or to the commodities to which they apply. In addition, there are no reassessments of the adequacy of the tolerances under the Federal Food, Drug, and Cosmetic Act's (FFDCA) standards for safety. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. Background

What Action is the Agency Taking?

EPA is transferring certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180.

Before the passage of the Food Quality Protection Act (FQPA), pesticide residues in food and feed were regulated under two sections of the FFDCA. Residues in raw agricultural commodities were regulated under section 408 of the FFDCA. The term ''raw agricultural commodity'' is defined in section 201(r) of the FFDCA as any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. Pesticide residues in processed food or animal feed were regulated as ''food additives'' under section 409 of the FFDCA. Because there were legal differences in authority and how and when tolerances could be established under sections 408 and 409, tolerances for the same pesticide could appear in several parts of the Code of Federal Regulations.

FQPA clarified the status of pesticide residues and brought all pesticide residues in food and feed under the authority of section 408 of the FFDCA. In addition, FQPA added a definition of ''processed food'' for the first time (section 201(gg) of the FFDCA). The term ''processed food'' is defined in section 201(gg) of the FFDCA as ''any food other than a raw agricultural food and includes any raw agricultural commodity that has been subject to processing....'' Subsequent to the passage of the FQPA, Congress, in the Antimicrobial Regulation Technical Corrections Act of 1988 (ARTCA) (Pub. L. 105–324), amended the definition of ''pesticide residue'' in section 201(q) of the FFDCA so as to exclude certain antimicrobial pesticide residues in raw and processed foods from the authority of section 408. These residues now fall within the coverage of FFDCA section 409. Since the statute has consolidated

much of authority for and treatment of pesticide chemical residues in food and feed under FFDCA section 408, EPA is now transferring those pesticide chemical residue regulations established under section 409 that pertain to pesticide chemical residues now covered by section 408 to the portion of the CFR, part 180, in which section 408 tolerance regulations are collected.

EPA is transferring these pesticide chemical residue regulations in stages. A second document will be issued later transferring additional pesticide chemical residue regulations. Eventually, all pesticide residue regulations in parts 185 and 186 that pertain to pesticide residues covered by section 408 will be transferred to part 180, and users will be able to determine all the section 408 tolerances for a single pesticide chemical by referring to the listings in part 180.

At the same time, EPA is creating a general definition that it will use in tolerance regulations to cover all the types of food and feed commodities. Henceforth, the term ''food commodity'' will be used to refer to raw agricultural commodities (food and feed), processed food commodities and processed animal feed commodities. Accordingly, EPA is adding the following definition to 40 CFR 180.1:

The term ''food commodity'' is defined to mean:

(1) Any raw agricultural commodity (food or feed) as defined in section 201(r) of the FFDCA; and

(2) Any processed food or feed as defined in section 201(gg) of the FFDCA.

This new definition merely consolidates the existing terminology used in the regulations and does not have the effect of changing the scope of any regulations under part 180 or the regulations being transferred to part 180. To the extent any existing regulations in part 180 apply to pesticide chemical residues that were transferred by ARTCA from coverage under section 408 to section 409, EPA will work with FDA, the agency that administers section 409, to insure that these regulations are identified and transferred to a portion of the CFR under FDA's jurisdiction.

While EPA believes that it has accurately transferred each of the tolerances included in this rule, the Agency would appreciate readers notifying EPA of discrepancies, omissions or technical problems by submitting them to the address or e-mail address under **FOR FURTHER INFORMATION CONTACT**. These would be corrected in a future rule.

EPA is not at this time making any changes in the tolerances or the commodities to which they apply, nor is EPA reassessing the adequacy of the tolerances under FFDCA standards for safety. Further, EPA is not at this time standardizing the terminology used to describe various food commodities. EPA is aware that there may be inconsistencies in the description of food commodities among parts 180, 185 and 186. EPA will make such changes when all tolerances have been consolidated. No tolerances are revoked by this rule. Duplicate tolerance entries, which would be created by transferring food and feed additive tolerances established for the same food commodity at the same tolerance level from parts 185 and 186 to the corresponding part 180 section, have been deleted.

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104– 4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and established an effective date of [*insert 30 days from date of publication in FR*]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: May 10, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I, Subchapter E is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

Subpart A—[Amended]

b. In subpart A, § 180.1 is amended by adding paragraph (p) to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(p) The term *food commodity* means:

(1) Any raw agricultural commodity (food or feed) as defined in section 201(r) of the Federal Food, Drug, and Cosmetic Act (FFDCA); and

(2) Any processed food or feed as defined in section 201(gg) of the FFDCA.

Subpart D—[Amended]

c. In subpart D, § 180.111 is amended by revising paragraph (a) to read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the following food commodities:

Commodity	Parts per million
Alfalfa (PRE-H)	135
Almond hulls (PRE-H)	50
Almonds (PRE- and POST-H)	8
Almonds, shells	50
Apples (PRE-H)	8
Apricots (PRE-H)	8
Asparagus (PRE-H)	8
Avocados (PRE-H)	8
Barley, grain (PRE- and POST-H)	8
Beans (PRE-H)	8
Beets (including tops) (PRE-H)	8
Beets, sugar, roots (PRE-H)	1
Beets, sugar, tops (PRE-H)	8
Birdsfoot trefoil, forage (PRE-H)	135
Birdsfoot trefoil, hay (PRE-H)	135
Blackberries (PRE-H)	8
Blueberries (PRE-H)	8
Boysenberries (PRE-H)	8
Carrots (PRE-H)	8
Cattle, fat (PRE-S)	4
Cattle, mbyp[1] (PRE-S)	4
Cattle, meat[1] (PRE-S)	4
Chayote fruit	8
Chayote roots	8
Cherries (PRE-H)	8
Chestnuts (PRE-H)	1
Clover (PRE-H)	135
Corn, forage (PRE-H)	8
Corn, fresh (including sweet K+CWHR) (PRE-H)	2
Corn, grain (POST-H)	8
Cottonseed (PRE-H)	2
Cowpea, forage (PRE-H)	135
Cowpea, hay (PRE-H)	135
Cranberries (PRE-H)	8
Cucumbers (PRE-H)	8
Currants (PRE-H)	8
Dates (PRE-H)	8
Dewberries (PRE-H)	8
Eggplants (PRE-H)	8
Eggs (from application to poultry)	0.1
Figs (PRE-H)	8
Filberts (PRE-H)	1
Flax seed	0.1
Flax straw	1
Garlic (PRE-H)	8
Goats, fat (PRE-S)	4
Goats, mbyp[1] (PRE-S)	4
Goats, meat[1] (PRE-S)	4
Gooseberries (PRE-H)	8
Grapefruit (PRE-H)	8
Grapes (PRE-H)	8
Grass, (PRE-H)	135
Grass, hay (PRE-H)	135
Guavas (PRE-H)	8
Hogs, fat (PRE-S)	4
Hogs, mbyp[1] (PRE-S)	4
Hogs, meat[1] (PRE-S)	4
Hops (PRE-H)	1
Horseradish (PRE-H)	8
Horses, fat (PRE-S)	4
Horses, mbyp[1] (PRE-S)	4
Horses, meat[1] (PRE-S)	4
Kumquats (PRE-H)	8
Leeks (PRE-H)	8
Lemons (PRE-H)	8
Lentils (PRE-H)	8
Lespedeza, hay (PRE-H)	135
Lespedeza, seed (PRE-H)	8
Lespedeza, straw (PRE-H)	135
Limes (PRE-H)	8
Loganberries (PRE-H)	8
Lupine, seed (PRE-H)	8
Macadamia nuts (PRE-H)	1
Mangos (PRE-H)	8
Melons (PRE-H)	8
Milk, fat (from application to dairy cows)	0.5
Mushrooms (PRE-H)	8
Nectarines (PRE-H)	8
Oats, grain (PRE- and POST-H)	8
Okra (PRE-H)	8
Onions (including green onions) (PRE-H)	8
Oranges (PRE-H)	8
Papayas (PRE-H)	1
Parsnips (PRE-H)	8
Passion fruit (PRE-H)	8
Peaches (PRE-H)	8
Peanut, forage (PRE-H)	135
Peanut, hay (PRE-H)	135
Peanuts (PRE- and POST-H)	8
Pears (PRE-H)	8
Peas (PRE-H)	8
Peavine, hay (PRE-H)	8
Peavines (PRE-H)	8
Pecans (PRE-H)	8
Peppermint (PRE-H)	8
Peppers (PRE-H)	8
Pineapples (PRE-H)	8
Plums (PRE-H)	8
Potatoes (PRE-H)	8
Poultry, fat (PRE-S)	4
Poultry, mbyp[1] (PRE-S)	4
Poultry, meat[1] (PRE-S)	4
Prunes (PRE-H)	8
Pumpkins (PRE-H)	8
Quinces (PRE-H)	8
Radishes (PRE-H)	8
Raspberries (PRE-H)	8
Rice, grain (PRE- and POST-H)	8
Rice, wild	8
Rutabagas (PRE-H)	8
Rye, grain (PRE- and POST-H)	8
Safflower, seed (PRE-H)	0.2
Salsify (including tops) (PRE-H)	8
Shallots (PRE-H)	8
Sheep, fat (PRE-S)	4
Sheep, mbyp[1] (PRE-S)	4
Sheep, meat[1] (PRE-S)	4
Sorghum, forage (PRE-H)	8
Sorghum, grain (PRE- and POST-H)	8
Soybeans (dry and succulent) (PRE-H)	8
Soybeans, forage (PRE-H)	135
Soybeans, hay (PRE-H)	135
Spearmint (PRE-H)	8
Squash, summer and winter (PRE-H)	8
Strawberries (PRE-H)	8
Sunflower seeds (Post-H)	8
Sweet potatoes (PRE-H)	1
Tangerines (PRE-H)	8
Tomatoes (PRE-H)	8
Turnips (including tops) (PRE-H)	8
Vegetables, leafy, *Brassica* (cole)	8
Vegetables, leafy (except *Brassica*)	8
Vetch, hay (PRE-H)	135
Vetch, seed (PRE-H)	8
Vetch, straw (PRE-H)	135
Walnuts (PRE-H)	8
Wheat, grain (PRE- and POST-H)	8

[1] The tolerance level shall not be exceeded in any cut of meat or in any meat byproduct from cattle, goats, hogs, horses, poultry, or sheep.

(2) Malathion may be safely used in accordance with the following conditions:

(i) It is incorporated into paper trays in amounts not exceeding 100 milligrams per square foot.

(ii) Treated paper trays are intended for use only in the drying of grapes (raisins).

(iii) Total residues of malathion resulting from drying of grapes on treated trays and from application to

grapes before harvest shall not exceed 12 parts per million on processed ready-to-eat raisins.

(3) Residues of malathion in refined safflower oil from application to the growing safflower plant shall not exceed 0.6 parts per million.

(4) Malathion may be safely used for the control of insects during the drying of grapes (raisins) in compliance with paragraph (a)(2) of this section by incorporation into paper trays in amounts not exceeding 100 milligrams per square foot.

(5) Malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) may be safely used in feed in accordance with the following conditions.

(i) A tolerance of 50 parts per million is established for residues of malathion in dehydrated citrus pulp for cattle feed, when present as the result of the application of the pesticide to bagged citrus pulp during storage. Whether or not tolerances for residues of malathion on the fresh fruit have been established under section 408 of the Act, the total residue of malathion in the dried citrus pulp shall not exceed 50 parts per million.

(ii) A tolerance of 10 parts per million is established for malathion in nonmedicated cattle feed concentrate blocks resulting from its application as a pesticide to paper used in packaging the nonmedicated cattle feed concentrate blocks.

* * * * *

d. Section 180.151 is revised to read as follows:

§ 180.151 Ethylene oxide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the antimicrobial agent and insecticide ethylene oxide, when used as a postharvest fumigant in or on the following food commodities:

Commodity	Parts per million
Black walnut meats	50
Copra	50
Spices, whole	50

(2) Ethylene oxide may be safely used as a fumigant for the control of microorganisms and insect infestation in ground spices and other processed natural seasoning materials, except mixtures to which salt has been added, in accordance with the following prescribed conditions:

(i) Ethylene oxide, either alone or admixed with carbon dioxide or dichlorodifluoromethane, shall be used in amounts not to exceed that required to accomplish the intended technical effects. If used with dichlorodifluoromethane, the dichlorodifluoromethane shall conform with the requirements prescribed by 21 CFR 173.355 of this chapter.

(ii) To assure safe use of the fumigant, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency and it shall be used in accordance with such label or labeling.

(iii) Residues of ethylene oxide in ground spices from both postharvest application to whole spices and application to the ground spices shall not exceed the established tolerance of 50 parts per million for residues in whole spices in paragraph (a)(1) of this section.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

e. Section 180.169 is revised to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on the following food commodities:

Commodity	Parts per million
Alfalfa	100
Alfalfa, hay	100
Almonds	1
Almonds, hulls	40
Apricots	10
Asparagus	10
Bananas	10
Barley, grain	0
Barley, green fodder	100
Barley, straw	100
Beans	10
Beans, forage	100
Beans, hay	100
Beets, garden (roots)	5
Beets, garden (tops)	12
Birdsfoot trefoil, forage	100.0
Birdsfoot trefoil, hay	100.0
Blackberries	12
Blueberries	10
Boysenberries	12
Broccoli	10
Brussels sprouts	10
Cabbage	10
Carrots	10
Cauliflower	10
Celery	10
Cherries	10
Chestnuts	1
Chinese cabbage	10
Citrus fruits	10
Clover	100
Clover, hay	100
Collards	12
Corn, fresh (including sweet) K+CWHR	5
Corn, fodder	100
Corn, forage	100
Cotton, forage	100
Cottonseed	5
Cowpeas	5
Cowpeas, forage	100
Cowpeas, hay	100
Cranberries	10
Cucumbers	10
Dandelions	12
Dewberries	12
Eggplants	10
Endive (escarole)	10
Filberts (hazelnuts)	1
Flax, seed	5
Flax, straw	100
Grapes	10
Grass	100
Grass, hay	100
Horseradish	5
Kale	12
Kohlrabi	10
Lentils	10
Lettuce	10
Loganberries	12
Maple sap	0.5
Melons	10
Millet, proso, grain	3
Millet, proso, straw	100
Mustard greens	12
Nectarines	10
Oats, fodder, green	100
Oats, grain	0
Oats, straw	100
Okra	10
Olives	10
Oysters	0.25
Parsley	12
Parsnips	5
Peaches	10
Peanuts	5
Peanuts, hay	100
Peas (with pods)	10
Peavines	100
Pecans	1
Peppers	10
Pistachio nuts	1
Plums (fresh prunes)	10
Poultry, fat	5
Poultry, meat	5
Potatoes	0.2(N)
Prickly pear cactus, fruit	12.0
Prickly pear cactus, pads	12.0
Pumpkins	10
Radishes	5
Raspberries	12
Rice	5
Rice, straw	100
Rutabagas	5
Rye, fodder, green	100
Rye, grain	0
Rye, straw	100
Salsify (roots)	5
Salsify (tops)	10
Sorghum, forage	100

Commodity	Parts per million
Sorghum, grain	10
Soybeans	5
Soybeans, forage	100
Soybeans, hay	100
Spinach	12
Squash, summer	10
Squash, winter	10
Strawberries	10
Sugar beets, tops	100
Sunflower seeds	1
Sweet potatoes	0.2
Swiss chard	12
Tomatoes	10
Turnips, roots	5
Turnips, tops	12
Walnuts	1
Wheat, fodder, green	100
Wheat (grain)	3
Wheat, straw	100

(2) Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) including its metabolites 1-naphthol (naphthyl-sulfate), 5,6-dihydrodihydroxycarbaryl, and 5,6-dihydrodihydroxy naphthol, calculated as 1-naphthyl *N*-methylcarbamate in or on the following food commodities:

Commodity	Part per million
Cattle, fat	0.1
Cattle, kidney	1
Cattle, liver	1
Cattle, meat	0.1
Cattle (mbyp)	0.1
Goats, fat	0.1
Goats, kidney	1
Goats, liver	1
Goats, meat	0.1
Goats (mbyp)	0.1
Horses, fat	0.1
Horses, kidney	1
Horses, liver	1
Horses, meat	0.1
Horses (mbyp)	0.1
Sheep, fat	0.1
Sheep, kidney	1
Sheep, liver	1
Sheep, meat	0.1
Sheep (mbyp)	0.1
Swine, fat	0.1
Swine, kidney	1
Swine, liver	1
Swine, meat	0.1
Swine (mbyp)	0.1

(3) A tolerance is established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its metabolites 1-naphthol (naphthyl sulfate), 5,6-dihydro-dihydroxycarbaryl and 5-methoxy-6-hydroxycarbaryl, calculated as 1-naphthyl *N*-methylcarbamate in or on the food commodity milk at 0.3 ppm.

(4) Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) in or on the following food commodities:

Commodity	Parts per million
Pineapple bran (wet and dry)	20
Pineapples	2.0
Pome fruits	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the insecticide carbaryl (1-napthyl *N*-methylcarbamate) in or on the following food commodities.

Commodity	Parts per million
Avocados	10.0
Dill (fresh)	0.2

(d) *Indirect or inadvertent residues.* [Reserved]

f. Section 180.182 is revised to read as follows:

§ 180.182 Endosulfan; tolerances for residues.

(a) *General.* (1) Tolerances are established for the total residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9*a*-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on the food commodities:

Commodity	Parts per million
Alfalfa, fresh	0.3
Alfalfa, hay	1.0
Almonds	0.2(N)
Almonds, hulls	1.0
Apples	2.0
Apricots	2.0
Artichokes	2.0
Barley, grain	0.1(N)
Barley, straw	0.2(N)
Beans	2.0
Beets, sugar, without tops	0.1(N)
Blueberries	0.1(N)
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	2.0
Carrots	0.2
Cattle, fat	0.2
Cattle, mbyp	0.2
Cattle, meat	0.2
Cauliflower	2.0
Celery	2.0
Cherries	2.0
Collards	2.0
Corn, sweet (K+CWHR)	0.2
Cottonseed	1.0
Cucumbers	2.0
Eggplant	2.0
Filberts	0.2(N)
Goats, fat	0.2
Goats, mbyp	0.2
Goats, meat	0.2
Grapes	2.0
Hogs, fat	0.2
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, mbyp	0.2
Horses, meat	0.2
Kale	2.0
Lettuce	2.0
Macadamia nuts	0.2(N)
Melons	2.0
Milk, fat (=N in whole milk)	0.5
Mustard greens	2.0
Mustard seed	0.2(N)
Nectarines	2.0
Oats, grain	0.1(N)
Oats, straw	0.2(N)
Peaches	2.0
Pears	2.0
Peas, succulent	2.0
Pecans	0.2(N)
Peppers	2.0
Pineapples	2.0
Plums	2.0
Potatoes	0.2(N)
Prunes	2.0
Pumpkins	2.0
Rape seed	0.2(N)
Raspberries	0.1
Rye, grain	0.1(N)
Rye, straw	0.2(N)
Safflower seed	0.2(N)
Sheep, fat	0.2
Sheep, mbyp	0.2
Sheep, meat	0.2
Spinach	2.0
Squash, summer	2.0
Squash, winter	2.0
Strawberries	2.0
Sugarcane	0.5
Sunflower seed	2.0
Sweet potatoes	0.2
Tomatoes	2.0
Turnips, greens	2.0
Walnuts	0.2(N)
Watercress	2.0
Wheat, grain	0.1(N)
Wheat, straw	0.2(N)

(2) A tolerance of 24 parts per million is established for combined residues of the insecticide endosulfan (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide) and its metabolite endosulfan sulfate (6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3,3-dioxide) in or on dried tea (reflecting less than 0.1 part per million residues in beverage tea) resulting from application of the insecticide to growing tea.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

g. Section 180.204 is revised as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

(a) *General.* Tolerances are established for total residues of the insecticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the following food commodities:

Commodity	Parts per million
Alfalfa	2
Apples	2
Beans, dry	2
Beans, lima	2
Beans, snap	2
Blueberries[1]	1
Broccoli	2
Cabbage	2
Cattle, fat	0.02(N)
Cattle, mbyp	0.02(N)
Cattle, meat	0.02(N)
Cauliflower	2
Celery	2
Citrus, pulp, dried	5
Collards	2
Corn, fodder	1
Corn, forage	1
Corn, grain	0.1(N)
Cottonseed	0.1
Eggs	0.02(N)
Endive (escarole)	2
Goats, fat	0.02(N)
Goats, mbyp	0.02(N)
Goats, meat	0.02(N)
Grapefruit	2
Grapes	1
Hogs, fat	0.02(N)
Hogs, mbyp	0.02(N)
Hogs, meat	0.02(N)
Horses, fat	0.02(N)
Horses, mbyp	0.02(N)
Horses, meat	0.02(N)
Kale	2
Lemons	2
Lentils	2.0
Lettuce	2
Melons	1
Milk	0.002(N)
Mustard greens	2
Oranges	2
Pears	2
Peas	2
Pecans	0.1
Peppers	2
Potatoes	0.2
Poultry, fat	0.02(N)
Poultry, mbyp	0.02(N)
Poultry, meat	0.02(N)
Safflower seed	0.1
Sheep, fat	0.02(N)
Sheep, mbyp	0.02(N)
Sheep, meat	0.02(N)
Sorghum, forage	0.2
Sorghum, grain	0.1
Soybeans	0.05(N)
Soybeans, forage	2
Soybeans, hay	2
Spinach	2
Swiss chard	2
Tangerines	2
Tomatoes	2
Turnips, roots	2
Turnips, tops	2
Wheat, grain	0.04(N)
Wheat, green fodder	2
Wheat, straw	2

[1]There are no U.S. registrations as of August 16, 1995.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for total residues of dimethoate including its oxygen analog in or on the following food commodities:

Commodity	Parts per million
Asparagus	0.15
Brussels sprouts	5
Cherries	2

(d) *Indirect or inadvertent residues.* [Reserved]

h. Section 180.235 is amended by revising the section heading and by adding paragraph (a)(3) to read as follows:

§ 180.235 Dichlorvos; tolerances for residues.

(a) * * *

(3) Dichlorvos may be present as a residue from application as an insecticide on packaged or bagged nonperishable processed food (see: 21 CFR 170.3(j)) in an amount in such food not in excess of 0.5 part per million (ppm). To assure safe use of the insecticide, its label and labeling shall conform to the label and labeling registered by the U.S. Environmental Protection Agency, and the usage employed shall conform with such label or labeling.

* * * * *

i. Section 180.252 is amended by revising the section heading and paragraph (a) to read as follows:

§ 180.252 Tetrachlorvinphos; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate) in or on the following food commodities:

Commodity	Parts per million
Alfalfa	110
Cattle, fat	1.5
Egg	0.1
Goat, fat	0.5
Hog, fat	1.5
Horse, fat	0.5
Milk, fat (reflecting negligible residues in whole milk).	0.5
Poultry, fat	0.75
Sheep, fat	0.5

(2) Tetrachlorvinphos may be safely used in accordance with the following prescribed conditions:

(i) It is used in the feed of beef, dairy cattle, and horses at a rate of 0.00015 pound (0.07 gram) and swine at the rate of 0.00011 pound (0.05 gram) per 100 pounds of body weight per day.

(ii) It is used for control of fecal flies in manure of treated cattle, horses, and swine.

(iii) To assure safe use of the pesticide, the label and labeling of the pesticide formulation shall conform to the label and labeling registered by the United States Environmental Protection Agency.

* * * * *

j. Section 180.253 is revised to read as follows:

§ 180.253 Methomyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy] thioacetimidate) in or on the food commodities as follows:

Commodity	Parts per million
Alfalfa	10
Apples	1
Asparagus	2
Avocados	2
Barley, grain	1
Barley, hay	10
Barley, straw	10
Beans, dry	0.1(N)
Beans, forage	10
Beans, succulent	2
Beets, tops	6
Blueberries	6
Brassica (cole) leafy vegetables	6.0
Broccoli	3
Brussels sprouts	2
Cabbage	5
Cauliflower	2
Celery	3
Chinese cabbage	5
Collards	6
Corn, fodder	10

Commodity	Parts per million
Corn, forage	10
Corn, fresh (inc sweet K+CWHR)	0.1(N)
Corn, grain (inc pop)	0.1(N)
Cottonseed	0.1(N)
Cucurbits	0.2(N)
Dandelions	6
Endive (escarole)	5
Grapefruit	2
Grapes	5
Grass, Bermuda	10
Grass, Bermuda, hay (dried and dehydrated)	40
Hops, dried[1]	12
Kale	6
Leeks	3.0
Lemons	2
Lentils	0.1
Lettuce	5
Mint, hay	2
Mustard greens	6
Nectarines	5
Oats, forage	10
Oats, grain	1
Oats, hay	10
Oats, straw	10
Onions, green	3
Oranges	2
Parsley	6
Peaches	5
Peanuts	0.1(N)
Peas	5
Peas, vines	10
Pecans	0.1
Peppers	2
Pomegranates	0.2(N)
Rye, forage	10
Rye, grain	1
Rye, hay	10
Rye, straw	10
Sorghum, forage	1
Sorghum, grain	0.2(N)
Soybeans	0.2(N)
Soybeans, forage	10
Spinach	6
Strawberries	2
Swiss chard	6
Tangerines	2
Tomatoes	1
Turnip greens, tops	6
Vegetables, fruiting	0.2(N)
Vegetables, leafy [exc. beets (tops), broccoli, Brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, dandelions, endive (escarole), kale, lettuce, mustard greens, parsley, spinach, Swiss chard, turnip greens (tops), and watercress]	0.2(N)
Vegetables, root crop	0.2(N)
Watercress	6
Wheat, forage	10
Wheat, grain	1
Wheat, hay	10
Wheat, straw	10

[1]There are no U.S. registrations for use of methomyl on dried hops as of February 14, 1990.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of methomyl in or on the following food commodities:

Commodity	Parts per million
Pears	4

(d) *Indirect or inadvertent residues.* [Reserved]

k. Section 180.272 is revised to read as follows:

§ 180.272 Tribuphos; tolerances for residues.

(a) *General.* Tolerances are established for residues of the defoliant tribuphos (*S,S,S*-tributyl phosphorotrithioate) in or on food commodities as follows:

Commodity	Parts per million
Cattle, fat (negligible residue).	0.02
Cattle, mbyp (negligible residue).	0.02
Cattle, meat (negligible residue).	0.02
Cottonseed	4
Cottonseed, hulls	6
Goats, fat (negligible residue).	0.02
Goats, mbyp (negligible residue).	0.02
Goats, meat (negligible residue).	0.02
Milk (negligible residue)	0.002
Sheep, fat (negligible residue).	0.02
Sheep, mbyp (negligible residue).	0.02
Sheep, meat (negligible residue).	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

l. Section 180.303 is revised to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the sum of the residues of the insecticide oxamyl (methyl N-N-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N,N-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on the following food commodities:

Commodity	Parts per million
Apples	2
Bananas	0.3
Cantaloupe	2.0
Celery	3
Citrus fruits	3
Cottonseed	0.2
Cucumbers	2.0
Eggplants	2.0
Honeydews	2.0
Peanuts	0.2
Peanut, forage	2.0
Peanut, hay	2.0
Pears	2.0
Peppermint, hay	10.0
Peppers (bell)	3
Peppers, non-bell	5.0
Pineapples	1
Pineapples, forage	10
Potatoes	0.1
Pumpkins	2.0
Root crop vegetables	0.1
Soybeans	0.2
Soybean straw	0.2
Spearmint, hay	10.0
Summer Squash	2.0
Tomatoes	2
Winter Squash	2.0
Watermelon	2.0

(2) A tolerance of 6 parts per million is established for residues of the insecticide oxamyl (methyl *N,N*-dimethyl-*N*-[(methylcarbamoyl)oxy]-1-thiooxamimidate) in pineapple bran as a result of application of the insecticide to growing pineapples.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

m. Section 180.332 is amended by revising the heading and paragraph (a) to read as follows:

§ 180.332 Metribuzin; tolerances for residues.

(a)*General.* Tolerances are established for combined residues of the herbicide metribuzin (4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-;1,2,4-triazin-5(4*H*)-one) and its triazinone metabolites in or on food commodities:

Commodity	Parts per million
Alfalfa, green	2
Alfalfa, hay	7
Asparagus	0.05
Barley, grain	0.75
Barley, milled fractions (except flour)	3
Barley, straw	1
Carrots	0.3
Cattle, fat	0.7
Cattle, mbyp	0.7
Cattle, meat	0.7
Corn, fodder	0.1
Corn, forage	0.1

Commodity	Parts per million
Corn, fresh (inc. sweet K+CWHR)	0.05
Corn, grain (inc. popcorn)	0.05
Eggs	0.01
Goats, fat	0.7
Goats, mbyp	0.7
Goats, meat	0.7
Grass	2
Grass, hay	7
Hogs, fat	0.7
Hogs, mbyp	0.7
Hogs, meat	0.7
Horses, fat	0.7
Horses, mbyp	0.7
Horses, meat	0.7
Lentils (dried)	0.05
Lentils, vine hay	0.05
Milk	0.05
Peas	0.1
Peas (dried)	0.05
Peas, forage	0.5
Peas, vine hay	0.05
Potatoes	0.6
Potatoes, processed (inc. potato chips)	3
Potato waste, processed (dried)	3
Poultry, fat	0.7
Poultry, mbyp	0.7
Poultry, meat	0.7
Sainfoin	2
Sainfoin, hay	7
Sheep, fat	0.7
Sheep, mbyp	0.7
Sheep, meat	0.7
Soybeans	0.1
Soybeans, forage	4
Soybeans, hay	4
Sugarcane	0.1
Sugarcane molassses	2
Tomatoes	0.1
Wheat, forage	2
Wheat, grain	00.75
Wheat, milled fractions (except flour)	3
Wheat, straw	1

* * * * *

n. Section 180.371 is revised to read as follows:

§ 180.371 Thiophanate-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide thiophanate-methyl (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue dimethyl-4,4-*o*-phenylene bis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl) in or on the following food commodities:

Commodity	Parts per million
Almonds (PRE-H)	0.2(N)
Almonds (hulls) pre-H	1.0
Apple, dried pomace	40.0
Apples (PRE- and POST-H)	7.0
Apricots (PRE- and POST-H)	15.0
Bananas (PRE-H)	2.0
Bananas, pulp (PRE-H)	0.2
Beans (snap and dry) (PRE-H)	2.0
Bean (forage and hay) (PRE-H)	50.0
Cattle, fat	0.1
Cattle, kidney	0.2(N)
Cattle, liver	2.5
Cattle, meat byproducts (exc. kidney and liver)	0.1(N)
Cattle, meat	0.1(N)
Celery (PRE-H)	3.0
Cherries (PRE- and POST-H)	15.0
Cucumbers	1.0
Eggs	0.1(N)
Goats, fat	0.1(N)
Goats, kidney	0.2
Goats, liver	2.5
Goat, meat byproducts (exc. kidney and liver)	0.1(N)
Goat, meat	0.1(N)
Hogs, fat	0.1(N)
Hogs, liver	1.0
Hogs, meat byproducts (exc. liver)	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, liver	1.0
Horses, meat byproducts (exc. liver)	0.1(N)
Horses, meat	0.1(N)
Melons	1.0
Milk	1.0
Nectarines (PRE- and POST-H)	15.0
Onion, dry	3.00
Onion, green	3.00
Pecans (PRE-H)	0.2
Peaches (PRE- and POST-H)	15.0
Peanuts (PRE-H)	0.2(N)
Peanuts (forage and hay) (PRE-H)	15.0
Plums (PRE- and POST-H)	15.0
Potatoes (seed treatment)	0.05
Poultry, fat	0.1(N)
Poultry, liver	0.2(N)
Poultry, meat byproducts (exc. liver)	0.1(N)
Poultry, meat	0.1(N)
Prunes (PRE- and POST-H)	15.0
Pumpkins	1.0
Sheep, fat	0.1(N)
Sheep, kidney	0.2
Sheep, liver	2.5
Sheep, meat byproducts (exc. kidney and liver)	0.1(N)
Sheep, meat	0.1(N)
Soybeans (PRE-H)	0.2
Squash	1.0
Strawberries (PRE-H)	5.0
Sugar beets (roots PRE-H)	0.2
Sugar beets (tops PRE-H)	15.0
Sugarcane (seed piece treatment PRE-H)	0.1(N)
Wheat, grain	0.05
Wheat, hay	0.10
Wheat, straw	0.10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

o. Section 180. 377 is revised to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide diflubenzuron (*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide) in or on the following food commodities:

Commodity	Parts per million
Artichokes	6.0
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	0.2
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Grapefruit	0.5
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.05
Mushrooms	0.2
Orange	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Soybeans	0.05
Soybean hulls	0.5
Tangerine	0.5
Walnuts	0.1

(2) A temporary tolerance expiring June 30, 1999, is established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01 ppm.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of diflubenzuron in or on the following raw agricultural commodities:

Commodity	Parts per million
Grass, pasture	1.0
Grass, range	3.0

(d) *Indirect or inadvertent residues.* [Reserved]

p. Section 180.403 is revised to read as follows:

§ 180.403 Thidiazuron; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the defoliant thidiazuron (N-phenyl-N-1,2,3-thiadiazol-5-ylurea) and its aniline containing metabolites in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mbyp	0.2
Cottonseed	0.4
Cottonseed hulls	0.8
Eggs	0.1
Goat, fat	0.2
Goats, meat	0.2
Goat, mbyp	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Milk	0.05
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

q. Section 180.404 is revised to read as follows:

§ 180.404 Profenofos; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*0*-ethyl-*S*-propyl phosphorothioate and its metabolites converted to 4-bromo-2-chlorophenyl and calculated as profenofos in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	3.0
Cottonseed hulls	6.0
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

r. Section 180.406 is revised to read as follows:

§ 180.406 Dimethipin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the harvest growth regulant dimethipin (2,3-dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide; CAS Reg. No. 55290–64–7) in or on the following food commodities:

Commodity	Parts per million
Cottonseed	0.5
Cottonseed hulls	0.7
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, mbyp	0.02
Goats, fat	0.02
Goats, meat	0.02
Goats, mbyp	0.02
Hogs, fat	0.02
Hogs, meat	0.02
Hogs, mbyp	0.02
Horses, fat	0.02
Horses, meat	0.02
Horses, mbyp	0.02
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, mbyp	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

s. Section 180.408 is revised to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	6.0
Alfalfa, hay	20.0
Almonds	0.5
Almonds, hulls	10.0
Apples	0.2
Apple, pomace (wet)	0.4
Apricots (dried)	4.0
Asparagus	7.0
Avocados	4.0
Beets	0.1
Beet, tops	0.1
Blueberries	2.0
Brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens]	0.1
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	1.0
Cattle, fat	0.4
Cattle, kidney	0.4
Cattle, liver	0.4
Cattle, meat	0.05
Cattle, mbyp (except kidney and liver)	0.05
Cauliflower	1.0
Cereal grains (except wheat, barley, and oats)	0.1
Citrus fruit	1.0
Citrus, oil	7.0
Citrus, pulp	7.0
Clover, forage	1.0
Clover, hay	2.5
Cottonseed	0.1
Cranberry	4.0
Cucurbit vegetables group	1.0
Eggs	0.05
Fruiting vegetables (except cucurbits) group	1.0
Ginseng	3.0
Goats, fat	0.4
Goats, kidney	0.4
Goats, liver	0.4
Goats, meat	0.05
Goats, mbyp (except kidney and liver)	0.05
Grain, crops	0.1
Grapes	2.0
Grass, forage	10.0
Grass, hay	25.0
Hogs, fat	0.4
Hogs, kidney	0.4
Hogs, liver	0.4
Hogs, meat	0.05
Hogs, mbyp (except kidney and liver)	0.05
Hops, dried	20
Hops, green	2.0
Horses, fat	0.4
Horses, kidney	0.4
Horses, liver	0.4
Horses, meat	0.05
Horses, mbyp (except kidney and liver)	0.05
Leafy vegetables (except brassica) group (except spinach)	5.0
Leaves of root and tuber vegetables (human food or animal feed) group	15.0
Legume vegetable, cannery waste	5.0
Legume vegetable foliage	8.0

Commodity	Parts per million
Legume vegetable group (dry or succulent)	0.2
Lettuce, head	5.0
Milk	0.02
Mustard greens	5.0
Onions, dry bulb	3.0
Onions, green	10.0
Peanut, hay	20.0
Peanut, meal	1.0
Peanut, nuts	0.2
Peanut, shells	2.0
Peanut, vines	20.0
Pineapples	0.1
Pineapple fodder	0.1
Pineapple forage	0.1
Potato waste, dried, processed	4.0
Potatoes, processed (including potato chips)	4.0
Poultry, fat	0.4
Poultry, kidney	0.4
Poultry, liver	0.4
Poultry, meat	0.05
Poultry, mbyp (except kidney and liver)	0.05
Potatoes	0.5
Prunes (dried)	4.0
Raisins	6.0
Raspberries	0.5
Root and tuber vegetables group	0.5
Sheep, fat	0.4
Sheep, kidney	0.4
Sheep, liver	0.4
Sheep, meat	0.05
Sheep, mbyp (except kidney and liver)	0.05
Soybean, grain	1.0
Soybean, hulls	2.0
Soybean, meal	2.0
Spinach	10.0
Stonefruit group	1.0
Strawberries	10.0
Sugar beets	0.1
Sugar beet molasses	1.0
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
Sunflowers	0.1
Sunflower, forage	0.1
Tomatoes, processed	3.0
Walnuts	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following raw agricultural commodity:

Commodity	Parts per million
Papaya	0.1

(d) *Indirect or inadvertent tolerances.* Tolerances are established for indirect or inadvertent residues of metalaxyl in or on the food commodities when present therein as a result of the application of metalaxyl to growing crops listed in paragraph (a) of this section and other non-food crops to read as follows:

Commodity	Part per million
Barley, grain	0.2
Barley, fodder	2.0
Barley, milling fractions	1.0
Barley, straw	2.0
Cereal grains group (except wheat, barley, and oats), fodder	1.0
Cereal grains group (except wheat, barley, and oats), forage	1.0
Cereal grains group (except wheat, barley, and oats), straw	1.0
Oat, fodder	2.0
Oat, forage	2.0
Oat, grain	0.2
Oat milling fractions	1.0
Oat, straw	2.0
Wheat, fodder	2.0
Wheat, forage	2.0
Wheat, grain	0.2
Wheat, milling fractions	1.0
Wheat, straw	2.0

§ 180.422 [Amended]

t. Section 180.422 is amended as follows:

i. In paragraph (a)(1), by changing the phrase ''agricultural commodities'' to read ''food commodities.''

ii. In paragraph (a)(2), remove the phrase ''food additive.''

iii. In paragraph (a)(3), remove the phrase ''feed additive.''

u. Section 180.427 is revised to read as follows:

§ 180.427 Fluvalinate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide (alpha *RS*,2R)-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybenzyl (*R*)-2-[2-chloro-4-(trifluoromethyl) anilino]-3-methylbutanoate in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.01
Cattle, mbyp	0.01
Cattle, meat	0.01
Cottonseed	0.1
Cottonseed hulls	0.3
Cottonseed oil (crude and refined)	1.0
Eggs	0.01
Goat, fat	0.01
Goat, mbyp	0.01
Goat, meat	0.01
Hogs, fat	0.01
Hogs, mbyp	0.01
Hogs, meat	0.01
Honey	0.05
Horses, fat	0.01
Horses, mbyp	0.01
Horses, meat	0.01
Milk	0.01
Poultry, fat	0.01
Poultry, mbyp	0.01
Poultry, meat	0.01
Sheep, fat	0.01
Sheep, mbyp	0.01
Sheep, meat	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the insecticide (alpha RS,2R)-fluvalinate[(RS)-alpha-cyano-3-phenoxybenzyl(R)-2-[2-chloro-4-(trifluoromethyl)anilino]-3-methylbutanoate in or on the following food commodities:

Commodity	Parts per million
Coffee	0.01

(d) *Indirect and inadvertent residues.* [Reserved]

v. Section 180.463 is amended by revising paragraph (a) to read as follows:

§ 180.463 Quinclorac; tolerances for residues.

(a) *General.* Tolerances are established for residues of quinclorac (3,7-dichloro-8-quinoline carboxylic acid) in or the following food commodities:

Commodity	Parts per million
Aspirated grain fractions	1200
Cattle, fat	0.7
Cattle, mbyp	1.5
Cattle, meat	0.05
Eggs	0.05
Goats, fat	0.7
Goats, mbyp	1.5
Goats, meat	0.05
Hogs, fat	0.7
Hogs, mbyp	1.5
Hogs, meat	0.05
Horses, fat	0.7
Horses, mbyp	1.5
Horses, meat	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, mbyp	0.1

Commodity	Parts per million
Poultry, meat	0.05
Rice bran	15.0
Rice grain	5.0
Rice, straw	12.0
Sheep, fat	0.7
Sheep, mbyp	1.5
Sheep, meat	0.05
Sorghum, grain, forage	3.0
Sorghum, grain, grain	6.0
Sorghum, grain, stover	1.0
Wheat forage	1.0
Wheat germ	0.75
Wheat grain	0.5
Wheat hay	0.5
Wheat straw	0.1

* * * * *

w. Section 180.476 is revised to read as follows:

§ 180.476 Triflumizole; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following food commodities:

Commodity	Parts per million
Apple pomace	2.0
Apples	0.5
Grapes	2.5
Grape pomace	15.0
Pears	0.5
Raisin waste	10.0

(2) Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following food commodities of animal origin:

Commodity	Parts per million
Cattle, fat	0.5
Cattle, meat	0.05
Cattle, mbyp	0.5
Eggs	0.05
Goats, fat	0.5
Goats, meat	0.05
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.05
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.05
Horses, mbyp	0.5
Milk	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.1
Sheep, fat	0.5
Sheep, meat	0.05
Sheep, mbyp	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

x. Section 180.477 is revised to read as follows:

§ 180.477 Flumiclorac pentyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide flumiclorac pentyl, pentyl[2-chloro-4-fluoro-5-(1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)phenoxy]acetate, including all the metabolites of flumiclorac pentyl, in or on the food commodities listed below. The tolerance level for each commodity is expressed in terms of the parent only which serves as an indicator of the use of flumiclorac pentyl on these food commodities.

Commodity	Parts per million
Corn, field, grain	0.01
Corn, field, fodder	0.01
Corn, field, forage	0.01
Soybean, hulls	0.02
Soybean, seed	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

y. Section 180.491 is revised to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) *General.* Propylene oxide may be safely used in or on foods in accordance with the following prescribed conditions:

(1) It is intended as a fumigant in or on bulk quantities of cocoa, gums, processed spices, and processed nutmeats (except peanuts) when such bulk foods are to be further processed into a final food form.

(2) It is applied in fumigation chambers not more than one time at a temperature not in excess of 125 °F. The maximum period of fumigation shall not exceed 4 hours for cocoa, processed nutmeats (except peanuts), and processed spices. For edible gums, the maximum duration shall be 24 hours.

(3) When used as described in paragraphs (a)(1) and (2) of this section, residues shall not exceed the following limitations:

Food	Limitations[1]
Cocoa	300
Gums	300
Processed nutmeats (except peanuts)	300
Spices, processed	300

[1] Expressed as parts per million of propylene oxide.

(4) When used as a mixture with carbon dioxide (92 parts of carbon dioxide to 8 parts of propylene oxide on a weight/weight basis), all commodities listed in paragraph (a)(3) of this section may be processed not more than one time for a period not to exceed 48 hours and at a temperature not to exceed 125 °F.

(5) To assure safe use of the pesticide, the label and labeling of the pesticide formulation shall conform to the label an labeling registered by the U. S. Environmental Protection Agency.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§§ 185.250, 185.1900, 185.2600, 185.2850, 185.4000, 185.4100, 185.5150, and 185.7000 [Removed]

b. Sections 185.250, 185.1900, 185.2600, 185.2850, 185.4000, 185.4100, 185.5150, and 185.7000 are removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§§ 186.550, 186.950, 186.2000, 186.2050, 186.2100, 186.3325, 186.3400, 186.3850, 186.4575, 186.4975, 186.5600, 186.5700, 186.5800, and 186.5850 [Removed]

b. Sections 186.550, 186.950, 186.2000, 186.2050, 186.2100, 186.3325, 186.3400, 186.3850, 186.4575, 186.4975, 186.5600, 186.5700, 186.5800, and 186.5850 are removed.

[FR Doc. 00–12958 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300753; FRL–6041–9]

RIN 2070–AB78

Consolidation of Certain Food and Feed Additive Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: The Office of Pesticide Programs is transferring certain of the pesticide food and feed additive regulations that are now in 40 CFR parts 185 and 186 to part 180. These regulations are being consolidate because as amatter of law all of the pesticide tolerances are now considered to be regulated under FFDCA section 408 as amended by the Food Quality Protection Act (Public Law 104–17) and they no longer need to be separate.

DATES: These technical amendments are effective on May 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail, Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: 3rd floor, Crystal Mall (CM #2), 2100 Jefferson Davis Drive, Arlington, VA 22202, (703) 308–9368; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300756. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. ''Good Cause'' Finding

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule contains technical, non-substantive amendments to 40 CFR. This rule transfers certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180. There are no changes to the tolerances or to the commodities to which they apply. In addition, there are no reassessments of the adequacy of the tolerances under the Federal Food, Drug, and Cosmetic Act's (FFDCA) standards for safety. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. Background

What Action is the Agency Taking?

EPA is transferring certain pesticide tolerances currently in 40 CFR parts 185 and 186 to 40 CFR part 180.

Before the passage of the Food Quality Protection Act (FQPA), pesticide residues in food and feed were regulated under two sections of the FFDCA. Residues in raw agricultural commodities were regulated under section 408 of the FFDCA. The term ''raw agricultural commodity'' is defined in section 201(r) of the FFDCA as any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. Pesticide residues in processed food or animal feed were regulated as ''food additives'' under section 409 of the FFDCA. Because there were legal differences in authority and how and when tolerances could be established under sections 408 and 409, tolerances for the same pesticide could appear in several parts of the Code of Federal Regulations.

FQPA clarified the status of pesticide residues and brought all pesticide residues in food and feed under the authority of section 408 of the FFDCA. In addition, FQPA added a definition of ''processed food'' for the first time (section 201(gg) of the FFDCA). The term ''processed food'' is defined in section 201(gg) of the FFDCA as ''any food other than a raw agricultural food and includes any raw agricultural commodity that has been subject to processing....'' Subsequent to the passage of the FQPA, Congress, in the Antimicrobial Regulation Technical Corrections Act of 1988 (ARTCA)(Public Law 105–324), amended the definition of ''pesticide residue'' in section 201(q) of the FFDCA so as to exclude certain antimicrobial pesticide residues in raw and processed foods from the authority of section 408. These residues now fall within the coverage of FFDCA section

409. Since the statute has consolidated much authority for and treatment of pesticide chemical residues in food and feed under FFDCA section 408, EPA is now transferring those pesticide regulations established under section 409 that pertain to pesticide chemical residues now covered by section 408 to the portion of the CFR, part 180, in which section 408 tolerance regulations are collected.

Published elsewhere in this separate part, EPA is transfering some of the regulations from parts 185 and 186 to part 180. With this document, all tolerances have been transferred, and users will be able to determine all the tolerances for a single pesticide chemical by referring to the listings in part 180.

While EPA believes that it has accurately transferred each of the tolerances included in this rule, the Agency would appreciate readers notifying EPA of discrepancies, omissions or technical problems by submitting any comments to the address or e-mail address under **FOR FURTHER INFORMATION CONTACT**. These would be corrected in a future rule.

EPA is not at this time making any changes in the tolerances or the commodities to which they apply, nor is EPA reassessing the adequacy of the tolerances under FFDCA standards for safety. Further, EPA is not at this time standardizing the terminology used to describe various food commodities. EPA is aware that there may be inconsistencies in the description of food commodities among parts 180, 185 and 186. EPA will make such changes when all tolerances have been consolidated.

No tolerances are revoked by this rule. Duplicate tolerance entries, which would be created by transfering food and feed additive tolerances established for the same food commodity at the same tolerance level from parts 185 and 186 to the corresponding part 180 section, have been deleted.

The following distribution table shows the new location of the provisions formerly in parts 185 and 186 now in part 180.

Old Sections	New Section
185.3700	180.123(a)(3)
186.3700	180.123(a)(3)
185.4900	180.127(a)(2)
186.4900	180.127(a)(3)
185.5200	180.128(a)(2)
186.5200	180.128(a)(3)
185.1350	180.144(a) table
186.1350	180.144(a) table
185.6300	180.176(a) table
186.6300	180.176(a) table
185.2500	180.226(a)(5)
186.2500	180.226(a)(6)
185.1800	180.227(a)(1) table
186.1800(a) and (b)	180.227(a)(1) table
185.5000	180.259(a) table
186.5000	180.259(a) table
185.150	180.269(a) table
186.150	180.269(a) table
185.2700	180.300(a) table
186.2700(a)	180.300(a) table
185.1000(a), (b), (c) and (d).	180.342(a)(1) table, (a)(3), (4), (2) table, respectively
186.1000	180.342(a)(1) table
185.2950	180.349(a)(1)
186.2950	180.349(a)(1)
185.4150	180.359(a)(1) table
186.4150(a), (b), (c)	180.359(a)(2)(i), (ii), and (iii), respectively
186.4150(d)	180.359(a)(1) table
185.3550	180.362(a) table
186.3550(a)	180.362(a) table
185.4500	180.367(a)(2)
185.5950	180.382(a) table
186.5950	180.382(a) table
185.3575	180.396(c) table
186.3575	180.396(c) table
185.4950(a) and (b), respectively.	180.409(a)(2), and (3)
186.4950	180.409(a)(2)
185.3250	180.411(a)(1) table
186.3250	180.411(a)(1) table
185.3650	180.413(a)(1) table
186.3650	180.413(a)(1) table
185.1050	180.419(a)(2)
186.1050	180.419(a)(2)
185.1200	180.538
185.3775 and 186.3775.	180.539
185.2200	180.540
185.5100	180.541(a)(1)
186.5100	180.541(a)(2)
185.3000	180.542
185.1700 and 186.1700.	180.1017(b)
185.650	180.1049(a)
185.4400	180.1050
185.1150	180.1051
185.4035 and 186.4035.	180.1116

III. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 24, 2000. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: May 10, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, parts 180, 185 and 186 are amended as follows:

I. By amending part 180 as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. By revising § 180.123 to read as follows:

§ 180.123 Inorganic bromide residues resulting from fumigation with methyl bromide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of inorganic bromides (calculated as Br) in or on the following food commodities which have been fumigated with the antimicrobial agent and insecticide methyl bromide after harvest (with the exception of strawberries):

Commodity	Parts per million
Alfalfa, hay (POST-H)	50.0
Almonds (POST-H)	200.0
Apples (POST-H)	5.0
Apricots (POST-H)	20.0
Artichokes, Jerusalem (POST-H)	30.0
Asparagus (POST-H)	100.0
Avocados (POST-H)	75.0
Barley (POST-H)	50.0
Beans (POST-H)	50.0
Beans, green (POST-H)	50.0
Beans, lima (POST-H)	50.0
Beans, snap (POST-H)	50.0
Beets, garden, roots (POST-H)	30.0
Beets, sugar, roots (POST-H)	30.0
Blueberries (POST-H)	20.0
Brazil nuts (POST-H)	200.0
Bush nuts (POST-H)	200.0
Butternuts (POST-H)	200.0
Cabbage (POST-H)	50.0
Cantaloupes (POST-H)	20.0
Carrots (POST-H)	30.0
Cashews (POST-H)	200.0
Cherries (POST-H)	20.0
Chestnuts (POST-H)	200.0
Cippolini, bulbs (POST-H)	50.0
Citrus citron (POST-H)	30.0
Cocoa beans (POST-H)	50.0
Coffee beans (POST-H)	75.0
Copra (POST-H)	100.0
Corn (POST-H)	50.0
Corn (pop) (POST-H)	240.0
Corn, sweet (K+CWHR) (POST-H)	50.0
Cottonseed (POST-H)	200.0
Cucumbers (POST-H)	30.0
Cumin, seed (POST-H)	100.0
Eggplants (POST-H)	20.0
Filberts (Hazelnuts) (POST-H)	200.0
Garlic (POST-H)	50.0
Ginger, roots (POST-H)	100.0
Grapefruit (POST-H)	30.0
Grapes (POST-H)	20.0
Hickory nuts (POST-H)	200.0
Honeydew melons (POST-H)	20.0
Horseradish (POST-H)	30.0
Kumquats (POST-H)	30.0
Lemons (POST-H)	30.0
Limes (POST-H)	30.0
Mangoes (POST-H)	20.0
Muskmelons (POST-H)	20.0
Nectarines (POST-H)	20.0
Oats (POST-H)	50.0
Okra (POST-H)	30.0
Onions (POST-H)	20.0
Oranges (POST-H)	30.0
Papayas (POST-H)	20.0
Parsnips, roots (POST-H)	30.0
Peaches (POST-H)	20.0
Peanuts (POST-H)	200.0
Pears (POST-H)	5.0
Peas (POST-H)	50.0
Peas, blackeyed (POST-H)	50.0
Pecans (POST-H)	200.0
Peppers (POST-H)	30.0
Pimentos (POST-H)	30.0
Pineapples (POST-H)	20.0
Pistachio nuts (POST-H)	200.0
Plums (POST-H)	20.0
Pomegranates (POST-H)	100.0
Potatoes (POST-H)	75.0
Pumpkins (POST-H)	20.0
Quinces (POST-H)	5.0
Radishes (POST-H)	30.0
Rice (POST-H)	50.0
Rutabagas (POST-H)	30.0
Rye (POST-H)	50.0
Salsify, roots (POST-H)	30.0
Sorghum, grain (POST-H)	50.0
Soybeans (POST-H)	200.0
Squash, summer (POST-H)	30.0
Squash, winter (POST-H)	20.0
Squash, zucchini (POST-H)	20.0
Strawberries (PRE- and POST-H)	60.0
Sweet potatoes (POST-H)	75.0
Tangerines (POST-H)	30.0
Timothy, hay (POST-H)	50.0
Tomatoes (POST-H)	20.0
Turnips, roots (POST-H)	30.0
Walnuts (POST-H)	200.0
Watermelons (POST-H)	20.0
Wheat	50.0

(2) Inorganic bromide may be present as a residue in certain processed foods in accordance with the following conditions:

(i) When inorganic bromide residues are is present as a result of fumigation of the processed food with methyl bromide or from such fumigation in addition to the authorized use of methyl bromide on the source raw agricultural commodity, as provided for in this part, the total residues of inorganic bromides (calculated as Br) shall not exceed the following levels:

(A) 400 parts per million in or on dried eggs and processed herbs and spices.

(B) 325 parts per million in or on parmesan cheese and roquefort cheese.

(C) 250 parts per million in or on concentrated tomato products and dried figs.

(D) 125 parts per million in or on processed foods other than those listed above.

(ii) When inorganic bromide residues are present in fermented malt beverages in accordance with 21 CFR 172.730(a)(2), the amount shall not exceed 25 parts per million (calculated as Br).

(iii) Where tolerances are established on both the raw agricultural commodities and processed foods made therefrom, the total residues of inorganic bromides in or on the processed food shall not be greater than those designated in paragraph (a)(2) of this section, unless a higher level is established elsewhere in this part.

(3) Tolerances are established for residues of inorganic bromides (calculated as Br) as follows:

(i) 400 parts per million for residues in or on dog food, resulting from fumigation with methyl bromide.

(ii) 125 parts per million for residues in or on milled fractions for animal feed from barley, corn, grain sorghum (milo), oats, rice, rye, and wheat, resulting directly from fumigation with methyl bromide or from carryover and concentration of residues of inorganic bromides from fumigation of the grains with methyl bromide.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n), is established for residues of inorganic bromides (calculated as Br) in or on the following food commodity grown in soil fumigated with methyl bromide.

Commodity	Parts per million
Ginger, roots (PRE- and POST-H)	100

(d) *Indirect or inadvertent residues.* [Reserved]

3. By revising § 180.127 to read as follows:

§ 180.127 Piperonyl butoxide; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the insecticide piperonyl butoxide [(butyl carbityl)(6-propyl piperonyl)ether] are established in or on the following food commodities:

Commodity	Parts per million
Almonds (POST-H)	8
Apples (POST-H)	8
Barley (POST-H)	20
Beans (POST-H)	8
Birdseed mixtures (POST-H)	20
Blackberries (POST-H)	8
Blueberries (huckleberries) (POST-H)	8
Boysenberries (POST-H)	8
Buckwheat (POST-H)	20
Cattle, fat	0.1(N)
Cattle, mbyp	0.1(N)
Cattle, meat	0.1(N)
Cherries (POST-H)	8
Cocoa beans (POST-H)	8
Copra (POST-H)	8
Corn (including popcorn) (POST-H)	20
Cottonseed (POST-H)	8
Crabapples (POST-H)	8
Currants (POST-H)	8
Dewberries (POST-H)	8
Eggs	1
Figs (POST-H)	8
Flaxseed (POST-H)	8
Goats, fat	0.1(N)
Goats, mbyp	0.1(N)
Goats, meat	0.1(N)
Gooseberries (POST-H)	8
Grain sorghum (POST-H)	8
Grapes (POST-H)	8
Guavas (POST-H)	8
Hogs, fat	0.1(N)
Hogs, mbyp	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, mbyp	0.1(N)
Horses, meat	0.1(N)
Loganberries (POST-H)	8
Mangoes (POST-H)	8
Milk fat (reflecting negligible residues in milk)	0.25
Muskmelons (POST-H)	8
Oats (POST-H)	8
Oranges (POST-H)	8
Peaches (POST-H)	8
Peanuts (with shell removed) (POST-H)	8
Pears (POST-H)	8
Peas (POST-H)	8
Pineapples (POST-H)	8
Plums (fresh prunes) (POST-H)	8
Potatoes (POST-H)	0.25
Poultry, fat	3
Poultry, mbyp	3
Poultry, meat	3
Raspberries (POST-H)	8
Rice (POST-H)	20
Rye (POST-H)	20
Sheep, fat	0.1(N)
Sheep, mbyp	0.1(N)
Sheep, meat	0.1(N)
Sweet potatoes (POST-H)	0.25
Tomatoes (POST-H)	8
Walnuts (POST-H)	8
Wheat (POST-H)	20

(2) Piperonyl butoxide may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with pyrethrins for control of insects:

(A) In cereal grain mills and in storage areas for milled cereal grain products, whereby the amount of piperonyl butoxide is at least equal to but not more than 10 times the amount of pyrethrins in the formulation.

(B) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 60 milligrams per square foot, whereby the amount of piperonyl butoxide is equal to 10 times the amount of pyrethrins in the formulation. Such treated bags are to be used only for dried foods.

(C) On cotton bags of 50 pounds or more capacity in amounts not exceeding 55 milligrams per square foot of cloth, whereby the amount of piperonyl butoxide is equal to 10 times the amount of pyrethrins in the formulation. Such treated bags are constructed with waxed paper liners and are to be used only for dried foods that contain 4 percent fat or less.

(D) In two-ply bags consisting of cellophane/polyolefin sheets bound together by an adhesive layer when it is incorporated in the adhesive. The treated sheets shall contain not more than 50 milligrams of piperonyl butoxide per square foot (538 milligrams per square meter). Such treated bags are to be used only for packaging prunes, raisins, and other dried fruits and are to have a maximum ratio of 3.12 milligrams of piperonyl butoxide per ounce of fruit (0.10 milligram of piperonyl butoxide per gram of product).

(E) In food processing and food storage areas: Provided, That the food is removed or covered prior to such use.

(ii) It is used or intended for use in combination with pyrethrins and N-octylbicycloheptene dicarboximide for insect control in accordance with 21 CFR 178.3730.

(iii) A tolerance of 10 parts per million is established for residues of piperonyl butoxide in or on:

(A) Milled fractions derived from cereal grains when present therein as a result of its use in cereal grain mills and in storage areas for milled cereal grain products.

(B) Dried foods when present as a result of migration from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(C) Foods treated in accordance with 21 CFR 178.3730.

(D) Dried foods that contain 4 percent fat, or less, when present as a result of migration from its use on the cloth of cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(E) Foods treated in accordance with paragraph (a)(2)(i)(D) and (E) of this section.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(v) Where tolerances are established on both raw agricultural commodities and processed foods made therefrom, the total residues of piperonyl butoxide in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(3) Piperonyl butoxide may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with pyrethrins for control of insects:

(A) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 60 milligrams per square foot.

(B) On cotton bags of 50 pounds or more capacity in amounts not exceeding 55 milligrams per square foot of cloth. Such treated bags are constructed with waxed paper liners and are to be used only for dried feeds that contain 4 percent fat or less.

(ii) It is used in combination with pyrethrins, whereby the amount of

piperonyl butoxide is equal to 10 times the amount of pyrethrins in the formulation. Such treated bags are to be used only for dried feeds.

(iii) A tolerance of 10 parts per million is established for residues of piperonyl butoxide when present as the result of migration:

(A) In or on dried feeds from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(B) In or on dried feeds that contain 4 percent fat, or less, from its use on cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency.

(v) Where tolerances are established on both the raw agricultural commodities and processed foods made therefrom, the total residues of piperonyl butoxide in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

4. By revising § 180.128 to read as follows:

§ 180.128 Pyrethrins; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the insecticide pyrethrins (insecticidally active principles of *Chrysanthemum cinerariaefolium*) are established in or on the following food commodities:

Commodity	Parts per million
Almonds (POST-H)	1
Apples (POST-H)	1
Barley (POST-H)	3
Beans (POST-H)	1
Birdseed mixtures (POST-H)	3
Blackberries (POST-H)	1
Blueberries (huckleberries) (POST-H)	1
Boysenberries (POST-H)	1
Buckwheat (POST-H)	3
Cattle, fat	0.1(N)
Cattle, mbyp	0.1(N)
Cattle, meat	0.1(N)
Cherries (POST-H)	1
Cocoa beans (POST-H)	1
Copra (POST-H)	1
Corn (including popcorn) (POST-H)	3
Cottonseed (POST-H)	1
Crabapples (POST-H)	1
Currants (POST-H)	1
Dewberries (POST-H)	1
Eggs	0.1(N)
Figs (POST-H)	1
Flaxseed (POST-H)	1
Goats, fat	0.1(N)
Goats, mbyp	0.1(N)
Goats, meat	0.1(N)
Gooseberries (POST-H)	1
Grain sorghum (POST-H)	1
Grapes (POST-H)	1
Guavas (POST-H)	1
Hogs, fat	0.1(N)
Hogs, mbyp	0.1(N)
Hogs, meat	0.1(N)
Horses, fat	0.1(N)
Horses, mbyp	0.1(N)
Horses, meat	0.1(N)
Loganberries (POST-H)	1
Mangoes (POST-H)	1
Milk fat (reflecting negligible residues in milk)	0.5
Muskmelons (POST-H)	1
Oats (POST-H)	1
Oranges (POST-H)	1
Peaches (POST-H)	1
Peanuts (with shell removed) (POST-H)	1
Pears (POST-H)	1
Peas (POST-H)	1
Pineapples (POST-H)	1
Plums (fresh prunes) (POST-H)	1
Potatoes (POST-H)	0.05
Poultry, fat	0.2
Poultry, mbyp	0.2
Poultry, meat	0.2
Raspberries (POST-H)	1
Rice (POST-H)	3
Rye (POST-H)	3
Sheep, fat	0.1(N)
Sheep, mbyp	0.1(N)
Sheep, meat	0.1(N)
Sweet potatoes (POST-H)	0.05
Tomatoes (POST-H)	1
Walnuts (POST-H)	1
Wheat (POST-H)	3

(2) Pyrethrins may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with piperonyl butoxide for control of insects:

(A) In cereal grain mills and in storage areas for milled cereal grain products, whereby the amount of pyrethrins is from 10 percent to 100 percent of the amount of piperonyl butoxide in the formulation.

(B) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 6 milligrams per square foot, whereby the amount of pyrethrins is equal to 10 percent of the amount of piperonyl butoxide in the formulation. Such treated bags are to be used only for dried foods.

(C) On cotton bags of 50 pounds or more capacity in amounts not exceeding 5.5 milligrams per square foot of cloth, whereby the amount of pyrethrins is equal to 10 percent of the amount of piperonyl butoxide in the formulation. Such treated bags are constructed with waxed paper liners and are to be used only for dried foods that contain 4 percent fat or less.

(D) In two-ply bags consisting of cellophane/polyolefin sheets bound together by an adhesive layer when it is incorporated in the adhesive. The treated sheets shall contain not more than 10 milligrams of pyrethrins per square foot (107.6 milligrams per square meter). Such treated bags are to be used only for packaging prunes, raisins, and other dried fruits and are to have a maximum ratio of 0.31 milligram of pyrethrins per ounce of fruit (0.01 milligram of pyrethrins per gram of product).

(E) In food processing areas and food storage areas: *Provided,* That the food is removed or covered prior to such use.

(ii) It is used or intended for use in combination with piperonyl butoxide and *N*-octylbicycloheptene dicarboximide for insect control in accordance with § 180.367(a)(2).

(iii) A tolerance of 1 part per million is established for residues of pyrethrins in or on:

(A) Milled fractions derived from cereal grains when present as a result of its use in cereal grain mills and in storage areas for milled cereal grain products.

(B) Dried foods when present as the result of migration from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(C) Foods treated in accordance with § 180.367(a)(2).

(D) Dried foods that contain 4 percent fat, or less, when present as a result of migration from its use on the cloth of cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(E) Foods treated in accordance with paragraphs (a)(2)(i)(D) and (a)(2)(i)(E)) of this section.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(v) Where tolerances are established on both the raw agricultural commodities and processed foods made therefrom, the total residues of pyrethrins in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(3) Pyrethrins may be safely used in accordance with the following prescribed conditions:

(i) It is used or intended for use in combination with piperonyl butoxide for control of insects:

(A) On the outer ply of multiwall paper bags of 50 pounds or more capacity in amounts not exceeding 6 milligrams per square foot.

(B) On cotton bags of 50 pounds or more capacity in amounts not exceeding 5.5 milligrams per square foot of cloth. Such treated bags are constructed with waxed paper liners and are to be used only for dried feeds that contain 4 percent fat or less.

(ii) It is used in combination with piperonyl butoxide, whereby the amount of pyrethrins is equal to 10 percent of the amount of piperonyl butoxide in the formulation. Such treated bags are to be used only for dried feeds.

(iii) A tolerance of 1 part per million is established for residues of pyrethrins when present as the result of migration:

(A) In or on dried feeds from its use on the outer ply of multiwall paper bags of 50 pounds or more capacity.

(B) In or on dried feeds that contain 4 percent fat, or less, from its use on cotton bags of 50 pounds or more capacity constructed with waxed paper liners.

(iv) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency.

(v) Where tolerances are established on both raw agricultural commodities and processed foods made therefrom, the total residues of pyrethrins in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

5. By revising § 180.144 to read as follows:

§ 180.144 Cyhexatin; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the pesticide cyhexatin (tricyclohexylhydroxystannane; CAS Reg. No. 13121–70–5) and its organotin metabolites (calculated as cyhexatin) in or on the following food commodities:

Commodity	Parts per million
Almonds	0.5
Almonds, hulls	60
Apples	2
Cattle, fat	0.2
Cattle, kidney	0.5
Cattle, liver	0.5
Cattle, mbyp (exc. kidney, liver)	0.2
Cattle, meat	0.2
Citrus fruits	2
Citrus pulp, dried	8
Goats, fat	0.2
Goats, kidney	0.5
Goats, liver	0.5
Goats, mbyp (exc kidney, liver)	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, kidney	0.5
Hogs, liver	0.5
Hogs, mbyp (exc kidney, liver)	0.2
Hogs, meat	0.2
Hops	30
Hops, dried	90
Horses, fat	0.2
Horses, kidney	0.5
Horses, liver	0.5
Horses, mbyp (exc kidney, liver)	0.2
Horses, meat	0.2
Macadamia nuts	0.5
Milk, fat (=N in whole milk)	0.05
Nectarines	4
Peaches	4
Pears	2
Plums (fresh prunes)	1
Prunes, dried	4
Sheep, fat	0.2
Sheep, kidney	0.5
Sheep, liver	0.5
Sheep, mbyp (exc kidney, liver)	0.2
Sheep, meat	0.2
Strawberries	3
Walnuts	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

6. By revising § 180.176 to read as follows:

§ 180.176 Mancozeb; tolerances for residues.

(a) *General.* Tolerances for residues of a fungicide which is a coordination product of zinc ion and maneb (manganous ethylene-bisdithiocarbamate) containing 20 percent manganese, 2.5 percent zinc, and 77.5 percent ethylene-bisdithiocarbamate (the whole product calculated as zinc ethylenebisdithiocarbamate), are established as follows:

Commodity	Parts per million
Apples	7
Asparagus (negligible residue)	0.1
Bananas	4.0
Bananas, pulp (no peel)	0.5
Barley, grain	5
Barley, milled feed fractions	20
Barley, straw	25
Carrots	2
Celery	5
Corn, fodder	5
Corn, forage	5
Corn grain (except popcorn grain)	0.1
Cottonseed	0.5
Crabapples	10
Cranberries	7
Cucumbers	4
Fennel	10
Fresh corn (including sweet corn, kernels plus cob with husk removed)	0.5
Grapes	7
Kidney	0.5
Liver	0.5
Melons	4
Oats, bran	20
Oats, grain	5
Oats, milled feed fractions	20
Oats, straw	25
Onions (dry bulb)	0.5
Papayas (whole fruit with no residue present in the edible pulp after the peel is removed and discarded)	10
Peanuts	0.5
Peanut vine hay	65
Pears	10
Popcorn grain	0.5
Quinces	10
Rye, grain	5
Rye, milled feed fractions	20
Rye, straw	25
Sugar beets	2
Sugarbeet tops	65
Summer squash	4
Tomatoes	4
Wheat, grain	5
Wheat, milled feed fractions	20
Wheat, straw	25

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate and it's metabolite ETU in connection with use of the pesticide under a section 18 emergency exemption granted by EPA. The tolerance will expire and is revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Ginseng	2.0	12/31/99

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

7. By revising § 180.226 to read as follows:

§ 180.226 Diquat; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2(a) Tolerancprime;,1-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, mbyp	0.02
Cattle, meat	0.02
Eggs	0.02
Goats, fat	0.02
Goats, mbyp	0.02
Goats, meat	0.02
Hogs, fat	0.02
Hogs, mbyp	0.02
Hogs, meat	0.02
Horses, fat	0.02
Horses, mbyp	0.02
Horses, meat	0.02
Milk	0.02
Potato	0.1
Potato, waste, dried	1.0
Poultry, fat	0.02
Poultry, mbyp	0.02
Poultry, meat	0.02
Sheep, fat	0.02
Sheep, mbyp	0.02
Sheep, meat	0.02

(2)(i) Tolerances are established for residues of the herbicide diquat (6,7-dihydrodipyrido (1,2-a:2,1-c) pyrazinediium) (calculated as the cation) derived from the application of the dibromide salt to ponds, lakes, reservoirs, marshes, drainage ditches, canals, streams, and rivers which are slow-moving or quiescent in programs of the Corps of Engineers or other Federal or State public agencies and to ponds, lakes and drainage ditches only where there is little or no outflow of water and which are totally under the control of the user, in or on the following food commodities:

Commodity	Parts per million
Avocado	0.02
Cotton, undelinted seed	0.02
Fish	0.1
Fruit, citrus, group	0.02
Fruit, pome, group	0.02
Fruits, small	0.02
Fruit, stone, group	0.02
Grain, crops	0.02
Grass, forage	0.1
Hop, dried cones	0.02
Nut, tree, group	0.02
Shellfish	0.1
Sugarcane, cane	0.02
Vegetable, cucurbit, group	0.02
Vegetable, foliage of legume, group	0.1
Vegetable, fruiting, group	0.02
Vegetables, leafy	0.02
Vegetable, root and tuber, group	0.02
Vegetables, seed and pod	0.02

(ii) Where tolerances are established at higher levels from other uses of diquat on the subject crops, the higher tolerances applies also to residues of the aquatic uses cited in this paragraph.

(3) Tolerances are established for the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2¼,1¼-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the following food commodities:

Commodity	Parts per million
Bananas	0.05
Coffee	0.05

(4) There are no U.S. registrations as of December 6, 1995.

(5) A tolerance of 0.5 part per million is established for residues of diquat in potato, granules/flakes and potato, chips.

(6) A tolerance regulation of 1.0 part per million (ppm) is established for residues of the desiccant diquat [6,7-dihydrodipyrido (1,2-a:2¼,1¼-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation, in processed, dried potato waste.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

8. By revising § 180.227 to read as follows

§ 180.227 Dicamba; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*- anisic acid in or on the food commodities as follows:

Commodity	Parts per million
Barley, grain	6.0
Barley, hay	2.0
Barley, straw	15.0
Corn, field, forage	3.0
Corn, field, stover	3.0
Corn, fodder	0.5
Corn, forage	0.5
Corn, grain	0.5
Corn, pop, stover	3.0
Cottonseed	5.0
Cottonseed, meal	5.0
Crop Group 17 (grass, forage, fodder and hay).	
Grass, forage	125.0
Grass, hay	200.0
Millet, proso, grain	0.5
Millet, proso, straw	0.5
Oats, forage	80.0
Oats, grain	0.5
Oats, hay	20.0
Oats, straw	0.5
Sorghum, fodder	3.0
Sorghum, forage	3.0
Sorghum, grain	3.0
Sugarcane	0.1
Sugarcane, fodder	0.1
Sugarcane forage	0.1
Sugarcane molasses	2.0
Wheat, forage	80.0
Wheat, grain	2.0
Wheat, hay	20.0
Wheat, straw	30.0

(2) Tolerances are established for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-2-hydroxybenzoic acid in or on the food commodities as follows:

Commodity	Parts per million
Asparagus	4.0
Cattle, fat	0.2
Cattle, kidney	1.5
Cattle, liver	1.5
Cattle, mbyp	0.2
Cattle, meat	0.2
Goats, fat	0.2
Goats, kidney	1.5
Goats, liver	1.5
Goats, mbyp	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, kidney	1.5
Hogs, liver	1.5
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, kidney	1.5
Horses, liver	1.5
Horses, mbyp	0.2
Horses, meat	0.2
Milk	0.3
Sheep, fat	0.2
Sheep, kidney	1.5
Sheep, liver	1.5
Sheep, mbyp	0.2
Sheep, meat	0.2

(3) Tolerances are established for the combined residues of dicamba (3,6-dichloro-*o*-anisic and its metablites 3,6-dichloro-5-hydroxy-*o*-anisic acid and 3,6-dichloro-2-hydroxybenzoic acid in or on the food commodities as follows:

Commodity	Parts per million
Aspirated grain fractions	5100.0
Soybean, hulls	13.0

Commodity	Parts per million
Soybean, seed	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

9. By revising § 180.259 to read as follows:

§ 180.259 Propargite; tolerances for residues.

(a) *General.* Tolerances are established for residues of the pesticide propargite (2-(*p-tert*-butylphenoxy) cyclohexyl 2-propynyl sulfite) in or on the following food commodities.

Commodity	Parts per million
Almonds	0.1
Almonds, hulls	55
Beans, dry	0.2
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
Citrus pulp, dried	40
Corn, fodder	10
Corn, forage	10
Corn, grain	0.1
Cottonseed	0.1
Eggs	0.1
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grapefruit	5
Grapes	10
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Hops	15
Hops, dried	30
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
Lemons	5
Milk, fat (0.08 ppm in milk)	2
Mint	50
Nectarines	4
Oranges	5
Peanuts	0.1
Peanuts, forage	10
Peanuts, hay	10
Peanuts, hulls	10
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Potatoes	0.1
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
Sorghum, fodder	10
Sorghum, forage	10
Sorghum, grain	10
Tea, dried	10
Walnuts	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of propargite in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, sweet, kernal plus cob with husks removed	0.1

(d) *Indirect or inadvertent residues.* [Reserved]

10. By revising § 180.269 to read as follows:

§ 180.269 Aldicarb; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the insecticide and nematocide aldicarb (2-methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl) oxime and its cholinesterase-inhibiting metabolites 2-methyl 2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl) oxime in or on the following food commodities:

Commodity	Parts per million
Beans (dry)	0.1
Beets, sugar	0.05
Beets, sugar, tops	1
Cattle, fat	0.01
Cattle, mbyp	0.01
Cattle, meat	0.01
Citrus pulp, dried	0.6
Coffee beans	0.1
Cottonseed	0.1
Cottonseed, hulls	0.3
Goats, fat	0.01
Goats, mbyp	0.01
Goats, meat	0.01
Grapefruits	0.3
Hogs, fat	0.01
Hogs, mbyp	0.01
Hogs, meat	0.01
Horses, fat	0.01
Horses, mbyp	0.01
Horses, meat	0.01
Lemons	0.3
Limes	0.3
Milk	0.002
Oranges	0.3
Peanuts	0.05
Pecans	0.5
Potatoes	1
Sheep, fat	0.01
Sheep, mbyp	0.01
Sheep, meat	0.01
Sorghum, bran	0.5
Sorghum, fodder	0.5
Sorghum, grain	0.2
Soybeans	0.02
Sugarcane	0.02
Sugarcane, fodder	0.1
Sugarcane, forage	0.1
Sweet potato	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

11. By revising § 180.300 to read as follows:

§ 180.300 Ethephon; tolerances for residues.

(a) *General.* Tolerances are established for residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on food commodities as follows:

Commodity	Parts per million
Apples	5
Barley, bran	5.0
Barley, grain	2.0
Barley, pearled barley	5.0
Barley, straw	10.0
Blackberries	30
Blueberries	20
Cantaloupes	2
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
Cherries	10
Coffee beans	0.1(N)
Cottonseed	2.0
Cranberries	5
Cucumbers	0.1
Fig	5
Goat, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grapes	2.0
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horse, meat	0.1
Nut, macadamia	0.5
Milk	0.1
Peppers	30
Pineapple	2
Pumpkin	0.1
Raisin	12
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
Sugarcane, molasses	1.5
Tomato	2
Walnuts	0.5
Wheat bran	5.0
Wheat, grain	2.0
Wheat, middlings	5.0
Wheat, shorts	5.0
Wheat, straw	10.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n), of 0.1 part per million is established for residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the food commodity sugarcane.

(d) *Indirect or inadvertent residues.* [Reserved]

12. By revising § 180.342 to read as follows:

§ 180.342 Chloropyrifos; tolerances for residues.

(a) *General.* (1) Tolerances are established for combined residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Almonds	0.2
Almonds, hulls	12.0
Apples	1.5
Beans, lima	0.05
Beans, lima, forage	1.0
Beans, snap	0.05
Beans, snap, forage	1.0
Beets, sugar, molasses	15.0
Beets, sugar, pulp (dried)	5.0
Beets, sugar, roots	1.0
Beets, sugar, tops	8.0
Blueberries	2 ppm (of which no more than 1 ppm is chlorpyrifos)
Citrus pulp, dried	5.0
Citrus fruits	1.0
Citrus oil	25.0
Corn, fresh (inc. sweet K+CWHR)	0.1
Corn oil	3.0
Cranberries	1.0
Kiwifruit	2.0
Mushrooms	0.1
Onions (dry bulb)	0.5
Peppers	1.0
Seed and pod vegetables	0.1
Sorghum, fodder	6.0
Sorghum, forage	1.5
Sorghum, grain	0.75
Sorghum milling fractions	1.5
Sunflower, seeds	0.25
Tomatoes	0.5
Tree nuts	0.2
Vegetables, leafy, *Brassica* (cole)	[1]2.0
Walnuts	0.2

[1] Of which no more than 1.0 ppm is chlorpyrifos.

(2) Tolerances are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	3
Alfalfa, hay	13
Bananas, whole	0.1
Bananas, pulp with peel removed	0.01
Bean, forage	0.7
Broccoli	1
Brussels sprouts	1
Cabbage	1
Caneberries	1.0
Cattle, fat	0.3
Cattle, meat and meat byproducts	0.05
Cauliflower	1
Cherries	1
Chinese cabbage	1
Corn, field, grain	0.05
Corn, forage and fodder	8
Cottonseed	0.2
Cucumbers	0.05
Eggs	0.01
Figs	0.01
Goats, fat	0.2
Goats, meat and meat byproducts	0.05
Hogs, fat	0.2
Hogs, meat and meat byproducts	0.05
Horses, meat, fat, and meat byproducts	0.25
Legume vegetables, succulent or dried (except soybeans)	0.05
Milk, fat	0.25
Milk, whole	0.01
Milling fractions (except flour) of wheat	1.5
Mint, hay	0.8
Mint oil	8
Nectarines	0.05
Pea forage	0.7
Peaches	0.05
Peanut oil	0.4
Peanuts	0.2
Pears	0.05
Plums	0.05
Poultry, meat, fat, and meat byproducts (inc. turkeys)	0.1
Pumpkins	0.05
Radishes	2
Rutabagas	0.5
Sheep, fat	0.2
Sheep, meat and meat byproducts	0.05
Soybean grain	0.3
Soybean forage	0.7
Strawberries	0.2
Sugarcane	0.01
Sweet potatoes	0.05
Turnip greens	0.3
Turnips	1
Wheat, grain	0.5
Wheat, straw	6
Wheat, forage	3

(3) Chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] may be safely used in accordance with the following prescribed conditions.

(i) Application shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are held, processed, prepared or served. Contamination of food or food contact surfaces shall be avoided. Food must be removed or covered during treatment.

(ii) Spray concentration for spot treatment shall be limited to a maximum of 0.5 percent of the active ingredient by weight. A course, low-pressure spray shall be used to avoid atomization or splashing of the spray.

(iii) Paint-on application for spot treatment shall be limited to a maximum of 2 percent of the active ingredient by weight.

(iv) Crack and crevice treatment shall be limited to a maximum of 2 percent of the active ingredient by weight. Equipment capable of delivering a pin-stream of insecticide shall be used.

(v) Application via adhesive strips shall contain a maximum of 10% by weight of the controlled-release product in food-handling establishments where food and food products are held, processed, prepared, or served. A maximum of 36 strips (or 5.15 grams of chlorpyrifos) is to be used per 100 square feet of floor space. The strips are not to be placed in exposed areas where direct contact with food, utensils, and food-contact surfaces would be likely to occur.

(vi) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(4) A tolerance of 0.1 part per million is established for residues of chlorpyrifos, per se, in or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food service establishments where food and food products are prepared and served, as a result of the application of chlorpyrifos in microencapsulated form.

(i) Application of a microencapsulated product shall be limited solely to spot and/or crack and crevice treatment in food handling establishments where food and food products are prepared and served. All treatments shall be applied in such a manner as to avoid contamination of food or food contact surfaces.

(ii) Spray concentrations shall be limited to a maximum of 0.5 percent of the active ingredient by weight.

(iii) For crack and crevice treatment, equipment capable of delivering a pin stream of spray directly into cracks and crevices or capable of applying small amounts of insecticide into cracks and crevices shall be used.

(iv) For spot treatment, an individual spot shall not exceed 2 square feet.

(v) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration, as defined in

§ 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Asparagus	5.0
Dates	0.5 (of which no more than 0.3 ppm is chlorpyrifos)
Grapes	0.5
Leeks	0.5 (of which no more than 0.2 ppm is chlorpyrifos)

(2) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) in or on the following food commodities:

Commodity	Parts per million
Cherimoya	0.05
Feijoa (pineapple guava)	0.05
Sapote	0.05

(d) *Indirect or inadvertent residues.* [Reserved]

13. By revising § 180.349 to read as follows:

§ 180.349 Fenamiphos; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the nematocide Fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate) and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1- methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the following food commodities:

Commodity	Parts per million
Apples	0.25
Bananas	0.10
Brussels sprouts	0.10
Cabbage	0.10
Cherries	0.25
Citrus, oil	25.0
Citrus pulp, dried	2.5
Cottonseed	0.05
Eggplant	0.1
Garlic	0.50
Grapefruit	0.60
Grapes	0.10
Lemons	0.60
Limes	0.60
Okra	0.30
Oranges	0.60
Peaches	0.25
Peanuts	0.02
Pineapples	0.30
Pineapples, bran	10.0
Raisins	0.3
Raspberries	0.1
Strawberries	0.6
Tangerines	0.60

(2) Tolerances are established for the combined residues of the nematocide Fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1- methylethyl)phosphoramidate, ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl)phosphoramidate, ethyl 3-methyl-4-(methylthio)phenyl phosphoramidate, ethyl-4-(methylsulfinyl)phenyl phosphoramidate, and ethyl 3-methyl-4-(methyl-sulfonyl)phenyl phosphoramidate in or on the following raw agricultural meat commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle (mbyp)	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats (mbyp)	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs (mbyp)	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses (mbyp)	0.05
Milk	0.01
Sheep, fat	0.05
Sheep, meat	0.05
Sheep (mbyp)	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of Fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl) phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the following raw agricultural commodities:

Commodity	Parts per million
Asparagus	0.02
Beets, garden, roots	1.5
Beets, garden, tops	1.0
Bok choy	0.5
Kiwifruit	0.1
Peppers, non-bell	0.6

(d) *Indirect or inadvertent residues.* [Reserved]

14. By revising § 180.359 to read as follows:

§ 180.359 Methoprene; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (*E,E*)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following food commodities:

Commodity	Parts per million
Barley	5.0
Buckweat	5.0
Cattle, fat	1.0
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Cereal grain milled fractions (except flour and rice hulls)	10
Corn (except popcorn and sweetcorn)	5.0
Eggs	0.1
Goats, fat	1.0
Goats, meat	0.1
Goats, meat byproducts	0.1
Hogs, fat	1.0
Hogs, meat	0.1
Hogs, meat byproducts	0.1
Horses, fat	1.0
Horses, meat	0.1
Horses, meat byproducts	0.1
Milk	0.1
Millet	5.0
Mushrooms	1.0
Oats	5.0
Peanuts	2.0
Poultry, fat	1.0
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Rice	5.0
Rice hulls	25
Rye	5.0
Sheep, fat	1.0
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sorghum (milo)	5.0
Wheat	5.0

(2) Methoprene (isopropyl (*E,E*)-11-methoxy-3,7,11- trimethyl-2,4-dodecadienoate) may be safely used in accordance with the following prescribed conditions:

(i) It is used in the form of mineral and/or protein blocks or other feed supplements in the feed of cattle at the rate of 22.7 to 45.4 milligrams per 100 pounds of body weight per month.

(ii) It is used to prevent the breeding of hornflies in the manure of treated cattle.

(iii) To ensure safe use of the pesticide, the label and labeling of the pesticide formulation containing this pesticide shall conform to the label and labeling registered by the U.S. Environmental Protection Agency.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

15. By revising § 180.362 to read as follows:

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl] distannoxane and its organotin metabolites calculated as hexakis[2-methyl-2-phenylpropyl] distannoxane in or on the following food commodities:

Commodity	Parts per million
Almonds	0.5
Almonds, hulls	80.0
Apples	15.0
Cattle, fat	0.5
Cattle, mbyp	0.5
Cattle, meat	0.5
Cherries, sour	6.0
Cherries, sweet	6.0
Citrus fruits	20.0
Citrus oil	140.0
Citrus pulp, dried	100.0
Cucumbers	4.0
Eggplant	6.0
Eggs	0.1
Goats, fat	0.5
Goats, mbyp	0.5
Goats, meat	0.5
Grapes	5.0
Hogs, fat	0.5
Hogs, mbyp	0.5
Hogs, meat	0.5
Horses, fat	0.5
Horses, mbyp	0.5
Horses, meat	0.5
Milk fat	0.1
Papayas	2.0
Pecans	0.5
Peaches	10.0
Pears	15.0
Plums	4.0
Poultry, fat	0.1
Poultry, mbyp	0.1
Poultry, meat	0.1
Prunes	4.0
Prunes, dried	20.0
Raisins	20.0
Sheep, fat	0.5
Sheep, mbyp	0.5
Sheep, meat	0.5
Strawberries	10.0
Walnuts	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for residues of the insecticide hexakis [2-methyl-2-phenylpropyl] distannoxane and its organotin metabolites calculated as hexakis [2-methyl-2-phenylpropyl] distannoxane in or on the food commodities:

Commodity	Parts per million
Raspberries	10.0

(d) *Indirect or inadvertent residues.* [Reserved]

16. By revising § 180.367 to read as follows:

§ 180.367 n-Octyl bicycloheptenedicarboximide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide *n*-octyl bicycloheptene-dicarboximide, resulting from dermal application, in food commodities as follows:

Commodity	Parts per million
Cattle, fat	0.3
Goats, fat	0.3
Hogs, fat	0.3
Horses, fat	0.3
Milk, fat	0.3
Sheep, fat	0.3

(2) *N*-octylbicycloheptene dicarboximide may be safely used in accordance with the following prescribed conditions:

(i) It is used in combination with piperonyl butoxide and pyrethrins for insect control in food-processing and food-storage areas, provided that the food is removed or covered prior to such use.

(ii) Residues in food resulting from the use described in paragraph (a)(2)(i) of this section shall not exceed 10 parts per million of *N*- octylbicycloheptene dicarboximide, 10 parts per million of piperonyl butoxide, and 1 part per million of pyrethrins.

(iii) To assure safe use of the pesticide, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

17. By revising § 180.382 to read as follows:

§ 180.382 Triforine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide triforine (*N,N*-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide]) in or on the following food commodities:

Commodity	Parts per million
Almond hulls	0.20
Almond (nutmeats)	0.01
Apples	0.01
Apricots	8.0
Bell peppers	5.0
Blueberries	.1
Cantaloupes	1.0
Cherries	3.0
Cranberries	.1
Cucumbers	.5
Eggplant	1.0
Hops, dried	60
Hops, spent	60
Nectarines	8.0
Peaches	8.0
Plums	3.0
Prunes (fresh)	3.0
Strawberries	2.0
Watermelon	1.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for residues of the fungicide triforine (*N,N*¼-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)[bis (formamide)) in or on the following food commodities:

Commodity	Parts per million
Asparagus	0.01

(d) *Indirect or inadvertent residues.* [Reserved]

18. By revising § 180.396 to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1, 3, 5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodities:

Commodity	Parts per million
Alfalfa green forage	2.0
Alfalfa hay	8.0
Blueberries	0.2
Cattle, fat	0.1
Cattle, mbyp	0.1

Commodity	Parts per million
Cattle, meat	0.1
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
Grasses, pasture	10
Grasses, range	10
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
Milk	0.1
Pineapple (whole fruit)	0.5
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethyamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodities:

Commodity	Parts per million
Sugarcane	0.2
Sugarcane molasses	5.0

(d) *Indirect or inadvertent residues.* [Reserved]

19. By revising § 180.409 to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the insecticide pirimiphos-methyl, *O*-[2-diethylamino-6-methyl-4-pyrimidinyl) *O,O*-dimethyl phosphorothioate, the metabolite *O*-[2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol), 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the following food commodities:

Commodity	Parts per million
Corn	8.0
Cattle fat	0.2
Cattle, kidney and liver	2.0
Cattle, mbyp	0.2
Cattle, meat	0.2
Eggs	0.5
Goats, fat	0.2
Goats, kidney and liver	2.0
Goats, mbyp	0.2
Goats, meat	0.2
Hogs, fat	0.2
Hogs, kidney and liver	2.0
Hogs, mbyp	0.2
Hogs, meat	0.2
Horses, fat	0.2
Horses, kidney and liver	2.0
Horses, mbyp	0.2
Horses, meat	0.2
Kiwifruit	5.0
Milk, fat (0.1 ppm (N) in whole milk)	3.0
Poultry, fat	0.2
Poultry, mbyp	2.0
Poultry, meat	2.0
Sheep, fat	0.2
Sheep, kidney and liver	2.0
Sheep, mbyp	0.2
Sheep, meat	0.2
Sorghum, grain	8.0

(2) Tolerances are established for the combined residues of the insecticide pirimiphos-methyl (*O*-[2-diethylamino-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate) and its metabolite *O*-(2-ethylamino-6-methyl-pyrimidin-4-yl) *O,O*-dimethyl phosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on the following food commodities when present therein as a result of application to stored grains:

Food	Parts per million
Corn milling fractions (except flour)	40
Corn oil	88
Sorghum milling fractions (except flour)	40

(3) A tolerance of 8.0 parts per million is established for residues of the insecticide pirimiphos-methyl (*0*-[2-diethylamino-6-methyl-4-pyrimidinyl]*O,O*-dimethyl phosphorothioate) and its metabolite O-(2-ethylamino-6-methyl-pyrimidine-4-yl)*O,O*-dimethylphosphorothioate and, in free and conjugated forms, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol,2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methylpyrimidin-4-ol in or on the processed commodity wheat flour as a result of application to stored wheat grain. There are no U.S. registrations for use of pirimiphos-methyl on wheat, as of June 12, 1990.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

20. By revising § 180.411 to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide fluazifop-butyl (#)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjugated and of (#)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	.05
Cattle, mbyp	.05
Cottonseed	.1
Cottonseed, oil	0.2
Eggs	.05
Goats, fat	.05
Goats, meat	.05
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.05
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.05
Horses, mbyp	.05
Milk	.05
Poultry, fat	.05
Poultry, meat	.05
Poultry, mbyp	.05
Sheep, fat	.05
Sheep, meat	.05
Sheep, mbyp	.05
Soybeans	1.0
Soybean, meal	2.0
Soybean, oil	2.0

(2) Tolerances are established for residues of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop, in or on the food commodity:

Commodity	Parts per million
Carrots	2.0
Endive	6.0
Macadamia nuts	0.1
Onions (bulb)	0.5
Pecans	0.05
Spinach	6.0
Stone fruits	0.05
Sweet potatoes	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration are established for residues of fluazifop-butyl (#)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjugated and of (#)-butyl-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the following food commodities:

Commodity	Parts per million
Peppers, tabasco	1.0

(2) Tolerances with regional registration, see § 180.1(n), are established for residues of the resolved isomer of the herbicide fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]-oxy]phenoxy] propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl[R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoate, all expressed as fluazifop, in or on the food commodities:

Commodity	Parts per million
Asparagus	3.0
Coffee	0.1
Rhubarb	0.5

(d) *Indirect or inadvertent residues.* [Reserved]

21. By revising § 180.413 to read as follows:

§ 180.413 Imazalil; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide imazalil 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol in or on the following food commodities:

Commodity	Parts per million
Bananas (Whole)	3.00
Bananas (Pulp)	0.20
Barley, grain	0.05
Barley, straw	0.5
Citrus fruit (POST-H)	10.0
Citrus oil	25.0
Citrus pulp (dried)	25.0
Cottonseed	0.05
Wheat, forage	0.5
Wheat, grain	0.05
Wheat, straw	0.5

(2) Tolerances are established for the combined residues of the fungicide imazalil 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole and its metabolites 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)-1-ethanol and 3-[1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-yl)ethoxyl]-1,2-propane diol in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.01
Cattle, liver	0.50
Cattle, meat	0.01
Cattle, mbyp	0.01
Goats, fat	0.01
Goats, liver	0.50
Goats, meat	0.01
Goats, mbyp	0.01
Hogs, fat	0.01
Hogs, liver	0.50
Hogs, meat	0.01
Hogs, mbyp	0.01
Horses, fat	0.01
Horses, liver	0.50
Horses, meat	0.01
Horses, mbyp	0.01
Milk	0.01
Sheep, fat	0.01
Sheep, liver	0.50
Sheep, meat	0.01
Sheep, mbyp	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

22. By revising § 180.419 to read as follows:

§ 180.419 Chlorpyrifos-methyl; tolerances for residues.

(a)*General.* (1) Tolerances are established for the combined residues of the insecticide chlorpyrifos-methyl [*O,-O,*-dimethyl *O*-(3,5,6-trichloro-2-pyridyl)] phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on the following food commodities:

Commodity	Parts per million
Barley, grain	6.0
Cattle, fat	0.5
Cattle, meat	0.5
Cattle, mbyp	0.5
Eggs	0.1
Goats, fat	0.5
Goats, meat	0.5
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.5
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.5
Horses, mbyp	0.5
Milk, fat (0.05 ppm (N) in whole milk	1.25
Oats, grain	6.0
Poultry, fat	0.5
Poultry, meat	.5
Poultry, mbyp	.5
Rice, grain	6.0
Sheep, fat	0.5
Sheep, meat	0.5
Sheep, mbyp	0.5
Sorghum, grain	6.0
Wheat, grain	6.0

(2) Tolerances are established for the combined residues of the insecticide chlorpyrifos-methyl (*O,-O-* dimethyl-*O-*(3,5,6-trichloro-2-pyridyl) phosphorothioate and its metabolite (3,5,6-trichloro-2-pyridinol) in or on the following food commodities when present therein as a result of application to stored grains:

Food	Parts per million
Barley milling fractions (except flour)	90
Oats milling fractions (except flour)	130
Rice milling fractions (except flour)	30
Sorghum milling fractions (except flour)	90
Wheat milling fractions (except flour)	30

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

23. By addding § 180.538 to read as follows:

§ 180.538 Copper; tolerances for residues.

(a) *General.* A tolerance of 1 part per million is established in potable water for residues of copper resulting from the use of the algicides or herbicides basic copper carbonate (malachite), copper sulfate, copper monoethanolamine, and copper triethanolamine to control aquatic plants in reservoirs, lakes, ponds, irrigation ditches, and other potential sources of potable water.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

24. By adding § 180.539 to read as follows.

§ 180.539 d-Limonene; tolerances for residues.

(a) *General.* (1) The insectide d-limonene may be safely used with the active ingredients dihydro-5-pentyl-2(3*H*)-furanone and dihydro-5-heptyl-2(3*H*)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

(2) To assure safe use of the insect repellent, its label and labeling shall

conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

25. By adding § 180.540 as follows:

§ 180.540 Fenitrothion; tolerances for residues.

(a) *General.* A tolerance of 30 parts per million, of which no more than 15 parts per million is *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate or *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphate, is established for combined residues of the insecticide *O,O*-dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate and its metabolites *O,O*-dimethyl O-(4-nitro-*m*-tolyl) phosphate and 3-methyl-4-nitrophenol in wheat gluten resulting from postharvest application of the insecticide to stored wheat in Australia.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

26. By adding § 180.541 to read as follows:

§ 180.541 Propetamphos; tolerances for residues.

(a) A tolerance of 0.1 part per million is established for residues of the insecticide propetamphos ([(e)-]-methylethyl 3-[[(ethylamino) methoxyphosphinothioyl]oxy]-2-butenoate]) in food commodities exposed to the insecticide during treatment of food- or feed-handling establishments.

(1) Direct application shall be limited solely to spot and/or crack and crevice treatment in food-handling establishments where food and food products are held, processed, prepared, or served. Spray and dust concentrations shall be limited to a maximum of 1 percent active ingredient. For crack and crevice treatment, equipment capable of delivering a dust or a pin-stream of spray directly into cracks and crevices shall be used. For spot treatment, a coarse, low-pressure spray shall be used to avoid contamination of food or food-contact surfaces.

(2) Direct application shall be limited solely to spot and/or crack and crevice treatment in feed-handling establishments where feed and feed products are held, processed, prepared, or sold. Spray and dust concentrations shall be limited to a maximum of 1 percent active ingredient. For crack and crevice treatment, equipment capable of delivering a dust or a pinstream of spray directly into cracks and crevices shall be used. For spot treatment, a coarse, low-pressure spray shall be used to avoid contamination of feed or feed-contact surfaces.

(3) To ensure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

27. By adding § 180.542 to read as follows

§ 180.542 Sulprofos; tolerances for residues.

(a) *General.* A tolerance of 1 part per million is established for residues of the insecticide Sulprofos, *O*-ethyl *O*-[4-(methylthio)- phenyl] *S*-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites in cottonseed oil resulting from application of the pesticide to growing cotton.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

28. By revising § 180.1017 to read as follows:

§ 180.1017 Diatomaceous earth; exemption from the requirement of a tolerance.

(a) Diatomaceous earth is exempted from the requirement of a tolerance for residues when used in accordance with good agricultural practice in pesticide formulations applied to growing crops, to food commodities after harvest, and to animals.

(b) Diatomaceous earth may be safely used in accordance with the following conditions. Application shall be limited solely to spot and/or crack and crevice treatments in food or feed processing and food or feed storage areas in accordane with the precribed conditions:

(1) It is used or intended for use for control of insects in food or feed processing and food or feed storage areas: *Provided,* That the food or feed is removed or covered prior to such use.

(2) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

29. By revising § 180.1049 to read as follows:

§ 180.1049 Carbon dioxide; exemption from the requirement of a tolerance.

The insecticide carbon dioxide is exempted from the requirement of a tolerance when used after harvest in modified atmospheres for stored insect control on food commodities.

30. By revising § 180.1050 to read as follows:

§ 180.1050 Nitrogen; exemption from the requirements of a tolerance.

The insecticide nitrogen is exempted from the requirements of a tolerance when used after harvest in modified atmospheres for stored product insect control on all food commodities.

31. By revising § 180.1051 to read as follows:

§ 180.1051 Combustion product gas; exemption from the requirements of a tolerance.

The insecticide combustion product gas is exempted from the requirements of a tolerance when used after harvest in modified atmospheres for stored product insect control on all food commodities (except fresh meat) with the following prescribed conditions.

(a) The insecticide is produced by the controlled combustion in air of butane, propane, or natural gas. The combustion equipment shall be provided with an absorption type filter capable of removing possible toxic impurities, through which all gas used in the treatment of food shall pass; and with suitable controls to insure that any combustion products failing to meet the specifications provided will be prevented from reaching the food being treated.

(b) The insecticide meets the following specifications:

(1) Carbon monoxide content not to exceed 4.5 percent by volume.

(2) It is used or intended for use to displace or remove oxygen in the storage of food, except fresh meat.

32. By revising § 180.1116 to read as follows:

§ 180.1116 Metarhizium anisopliae strain ESF1; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for the microbial pest control agent *Metarhizium anisopliae* strain ESF1 on all raw agricultural commodities in accordance with the following prescribed conditions:

(1) Application shall be limited solely to placement of attractant stations containing *Metarhizium anisopliae* strain ESF1.

(2) To ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency.

(b) An exemption from the requirement of a tolerance is established allowing the use of the microbial pest-control agent *Metarhizium anisopliae* strain ESF1 as follows:

(1) *Metarhizium anisopliae* strain ESF1 may be present as a residue in food items as a result of application of *Metarhizium anisopliae* strain ESF1 in food-handling establishments, including food service, manufacturing, and processing establishments such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat-slaughtering and packing plants, and canneries where food and food products are held, processed, and served.

(2) *Metarhizium anisopliae* strain ESF1 may be present as a residue in or on processed animal feeds as a result of application of *Metarhizium anisopliae* strain ESF1 in feed-handling establishments, including areas where livestock and poultry feed is consumed, feed-manufacturing establishments and feed-processing establishments such as stores, supermarkets, dairies, poultry houses, livestock barns, meat-slaughtering and packing plants, and canneries, where feed and feed products are held, processed, sold and/or consumed by livestock or poultry.

(c) With respect to paragraphs (b)(1) and (2) of this section, application of the microbial pest control agent shall be limited solely to placement of attractant stations containing *Metarhizium anisopliae* strain ESF1 in food-handling establishments or in animal feed-handling establishments, and to ensure safe use of the microbial pest control agent, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

II. In part 185:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 348.

2. By removing part 185 in its entirety.

III. In part 186:

PART 186—[AMENDED]

1. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

2. By removing part 186 in its entirety.

[FR Doc. 00–12959 Filed 5–23–00; 8:45 am]

BILLING CODE 6560–50–F

Federal Register

Wednesday,
May 24, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135
Emergency Medical Equipment; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA–2000–7119; Notice No. 00–03]

RIN 2120–AG89

Emergency Medical Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action responds to the Aviation Medical Assistance Act of 1998 by proposing that air carrier operators carry automated external defibrillators on large, passenger-carrying aircraft and also augment currently required emergency medical kits. It would affect those operations for which at least one flight attendant is required and, if adopted, would require instruction on the use of this equipment. This proposal would modify the regulations to include provisions designed to provide the option of treatment of serious medical events during flight time.

DATES: Comments must be received on or before September 21, 2000.

ADDRESSES: Comments on this document should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–7119, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov/. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum, AAM–210, Aeromedical Standards, Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9689.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–7119.'' The postcard will be date-stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Issue

The Aviation Medical Assistance Act (the Act) was introduced in the United States Congress on November 6, 1997. Enacted April 24, 1998 [Pub. L. 105–170, 49 USC 44701], the Act directs the FAA to determine whether current minimum requirements for air carrier crewmember medical emergency training and air carrier emergency medical equipment should be modified.

Typically, when in-flight medical events occur, airline passengers may be assisted by crewmembers, generally flight attendants working in the cabin, and by other passengers. Flight attendants frequently solicit the voluntary advice and assistance of medically qualified passengers, if on board, to assist with serious medical events. A basic emergency medical kit and a basic first-aid kit are required to be carried on board major air carriers and are available for use. Additionally, and if available, ground-based medical advice may be solicited. If it is subsequently recommended to divert the flight, the pilot in command may elect to land the aircraft.

With passenger enplanements numbering over 600 million in 1998, nearly double what they were in the early 1980's, an increase in passengers needing in-flight medical assistance is anticipated for the future. The overall aging of the general population is expected to result in a greater number of air carrier passengers with medical conditions, passengers who are more likely to experience an in-flight medical event.

The most commonly observed serious in-flight medical events appear to be cardiac in nature, due to chronic pre-existing conditions or to the sudden onset of previously unknown conditions. Reporting seen in various medical journals, as well as in the popular press, reveals the following about cardiac events in general:

- Cardiac arrest (the stopping of effective pumping of blood by the heart) reportedly strikes over 350,000 Americans every year, typically those 41 to 65 years old.
- The most common form of treatable cardiac arrest (a substantial portion of all cardiac events) is caused by an abnormal heart rhythm called ''ventricular fibrillation,'' (where the heart is still beating, although ineffectively pumping blood). Ventricular fibrillation is treatable with defibrillation, electric shocks that stimulate the heart to resume beating normally.
- Survival of individuals undergoing ventricular fibrillation can be as high as 90 percent in some circumstances, if defibrillation is provided during the first minute following collapse and subsequent cardiac care is rapidly provided.

• For every minute that defibrillation is delayed, survival is reported to fall about 10 percent, dropping below 50 percent after 6 minutes.

• By providing early electrical correction of ineffective heart pumping, therapeutic defibrillation is more effective than cardiopulmonary resuscitation (CPR) in sustaining life and function in certain situations.

In light of the aforementioned, and for reasons elaborated in the discussion below, the FAA is reviewing emergency medical equipment and crewmember emergency medical training requirements.

Background

Automated External Defibrillators

Cardiac defibrillator technology has progressed to the point that defibrillation similar to that performed in hospitals can, in many cases, be accomplished effectively outside the hospital environment by automated external defibrillators (AED's). When activated, AED's deliver a high energy electrical pulse to attempt to restore the normal electric heart activity required for normal heart function. At a cost of approximately $3,500 per unit, AED's are lightweight, compact, virtually maintenance-free, and simple to use. Because these battery-powered systems voice-prompt step-by-step guidance, appropriately trained non-medical personnel may use them fairly confidently to assist in certain, especially treatable, cardiac emergencies.

The type of AED most commonly used can monitor a person's heart rhythm and prompt whether a shock should be administered. The machine determines whether, and when, an individual needs to be administered an electric shock. If defibrillation is needed and is successfully performed, further medical intervention is necessary to determine the underlying cause for definitive treatment.

CPR is a necessary adjunct to AED usage as it may be the only effective assistance available. CPR should be initiated immediately upon encountering any apparent cessation of breathing or cardiac arrest (in an attempt to maintain a person's oxygen flow) and must be continued in the event of any of the following: the AED voice-prompt indicates ''no shock,'' and a pulse is absent; three AED shocks are administered to no avail; the AED malfunctions. As some cardiac events will not be treatable by AED, it is vital that CPR be started and performed as long as necessary.

Some non-medical professionals, among them police officers and fire fighters, have the devices available and are trained to use them. The U.S. Food and Drug Administration (FDA) regulates the use of AED's and began approving use of the devices in an aircraft environment in September 1996. Subsequent to this approval, several air carriers voluntarily have begun or have announced plans to carry them on board.

Emergency Medical Kits

In 1986, the FAA promulgated a final rule, ''the Emergency Medical Equipment Requirements Rule,'' requiring large, passenger-carrying aircraft to carry emergency medical kits [51 FR 1218; January 9, 1986, effective August 1, 1986]. The FAA set a minimum standard for kit contents requiring the following: a sphygmomanometer, which is an instrument for measuring blood pressure; a stethoscope; three different sizes of oral airways (breathing tubes); syringes; needles; 50 percent dextrose injection, for hypoglycemia or insulin shock; epinephrine, for asthma or acute allergic reactions; diphenhydramine, for allergic reactions; nitroglycerin tablets, for cardiac-related chest pain; and basic instructions on the use of the drugs.

The rule has been amended once, in October 1994, [59 FR 52640; October 18, 1994], to require protective gloves. Also, in January 1996, under the ''Commuter Rule,'' commuter air carriers operating 20-to-30-seat airplanes, that previously were required to carry only first-aid kits, have been required to carry the emergency medical kit described above [60 FR 65831, December 20, 1995].

At the time the emergency medical kit rule was promulgated, there was controversy over what types of instruments and medications the FAA should require since some commenters to the proposed rule expressed concerns about controlled substances (originally proposed for the action) being stowed on board any passenger aircraft. It was argued that an aircraft should not be a flying hospital, but that the proper course of action in the event of an on-board medical emergency is for the pilot in command to decide if the aircraft can be landed safely to allow the ailing passenger to receive appropriate medical care. As a result of these concerns, the FAA scaled down its original proposal in terms of the contents that would be required of emergency medical kits. The rule promulgated was designed to ensure that, at the very least, U.S.-registered aircraft would have the basic, minimum equipment on board if the crew chose to attempt treatment and/or to aid in decisions regarding diversion. The rule also required airlines to report to the FAA principal operations inspector, for a period of 24 months after the effective date of the rule, information on each medical emergency occurring during flight time and resulting in the use of the emergency medical kit or the diversion of aircraft.

Related Studies

The FAA's Civil Aeromedical Institute (CAMI), located in Oklahoma City, has conducted four specific studies on in-flight medical emergencies and the use of the emergency medical kit. These technical reports, issued by CAMI in 1991, 1997, and 2000, are described briefly below. Copies of the CAMI reports are available for review in the public docket established for this rulemaking action.

CAMI Technical Reports

• ''Response Capability During Civil Air Carrier In-flight Medical Emergencies'' [March 1991; DOT/FAA/AM–91/3] and ''Utilization of Emergency Kits by Air Carriers.'' [March 1991; DOT/FAA/AM–91/2].

The former report reveals the preliminary findings and the latter report reveals the comprehensive findings of data collected from part 121 air carriers on medical emergencies. As described above, ''The Emergency Medical Equipment Requirements Rule'' issued in 1986 required that, for a 2-year period, all part 121 air carriers maintain records on each medical event occurring during flight time which resulted in the use of the emergency medical kit, diversion of the aircraft, or death of a passenger or crewmember.

During the 2-year monitoring period, a total of 2,322 medical events were documented (equating to approximately three per day) with 33 deaths reported. In the 2,293 actual uses of the medical kit, a physician was the provider in over 85% of the cases. The most common presenting symptom was pain, followed by unconsciousness, impaired breathing, nausea and/or vomiting; the most common presenting ''sign'' was described as a ''myocardial problem.''

Although only 2 years of data were available for review, the pattern of medical kit item usage was very similar in the first and second years. An increase in the number of cases also was noted in the second year. The FAA did not find justification to make any modifications to the emergency medical kits following the 2-year regulatory reporting period.

• ''In-flight Medical Care, An Update'' [February 1997; DOT/FAA/AM–97/2].

From 1990 to 1993, CAMI obtained information from two airlines and two in-flight medical care delivery companies to determine which category of in-flight medical event occurred most frequently and which category accounted for the greatest number of diversions. The trend in the frequency of diversions for medical reasons also was assessed. The effect of in-flight medical advice was then evaluated by comparing the number of diversions that resulted in hospitalizations to the number that did not. The findings showed that neurological, syncopal, and cardiac episodes respectively, were the most frequent categories of medical emergencies encountered in flight, while cardiac, neurological, and respiratory events, in that order, accounted for the most diversions.

• ''The Evaluation of In-flight Medical Care Aboard Selected U.S. Air Carriers from 1996 to 1997'' [April 2000; DOT/FAA/AM–00/13].

• CAMI analyzed 1,132 in-flight medical incidents that occurred between October 1, 1996, and September 30, 1997. The data included information from six airlines that accounted for approximately 20 percent of all U.S. domestic enplanements for the period. This study was not designed to provide an in-depth review of in-flight medical care delivery; however, the data did reveal that in-flight diagnoses by ground-based physicians frequently can be in close agreement with hospital discharge diagnoses, indirectly implying that the proper diagnosis was made in flight. In particular, in the case of cardiac patients, the agreement rate was 94.1 percent, and passengers appeared to be conservatively diagnosed and treated in flight. Many of these in-flight diagnoses were made with the assistance of a ground-based physician.

Additionally, this study suggested that the items that should be considered for possible addition to a future medical kit include a bronchodilator inhaler, an oral antihistamine, and some form of oral non-narcotic analgesic medication. These items are not commonly available because they are not routinely carried by other passengers or the airline. No data were collected in this study concerning AED's as they were not being carried on board at the time of the study. As a result, no consideration was given to adding cardiac drugs to the emergency medical kit for use after an AED intervention.

Related Activity

In 1995, in light of changing demographics of air carrier passengers and advances in clinical medicine, some FAA physicians began an informal analysis of in-flight medical events. These physicians explored the issue with individual air carriers, the Aerospace Medical Association (AsMA), the Air Transport Association (ATA), and MedAire, Inc. (a for-profit firm that provides medical advice to flight crews through air-to-ground communication links). The physicians did not produce any written technical reports or recommend any regulatory changes; they merely gathered information on the issue.

In May 1997, the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Aviation, held hearings on in-flight medical events. Witnesses who testified at these hearings strongly supported additional crew training and the inclusion of AED's in the onboard medical equipment.

In August 1997, AsMA convened a task force of physicians across the major medical specialties to review the contents of emergency medical kits. This task force recommended certain minimum medications and medical supplies for air carriers. The group further recommended that air carriers consider AED's on wide body aircraft for use on specific routes, particularly lengthy or over-water flights. It was recommended that AED's be tested for their possible effects on installed avionics and that airlines use an appropriate training program with particular attention given to safety considerations of in-flight use. These recommendations were based on a survey of 2,300 AsMA physicians who had treated at least one passenger on a commercial flight.

In December 1997, an ATA Medical Panel recommended that ATA member airlines place AED's on at least 20 percent of the aircraft in their fleets (initially), upgrade emergency medical kits, and modify flight attendant training on the use of this equipment. (In forming this recommendation, this ATA group collected information from nine member airlines on in-flight medical emergencies and medical kit usage.)

In January 1998, the FAA received a petition for rulemaking from a physician who had assisted a passenger on board a December 1997 flight who apparently suffered a fatal heart attack. The petitioner requested that the FAA take action to upgrade emergency medical equipment being carried on board major air carriers.

On April 24, 1998, the Aviation Medical Assistance Act of 1998 (the Act), Pub. L. 105–170, 49 U.S.C 44701, was enacted. The Act directs that the FAA take the following action:

• Evaluate the equipment required to be carried in air carrier emergency medical kits and the training of flight attendants on the use of such equipment; issue a Notice of Proposed Rulemaking (NPRM) if regulations need to be modified.

• Collect data for 1 year from a major air carrier on medical emergencies that result in death and any information necessary to determine whether AED's should be required on board air carriers (with a maximum payload capacity of more than 7,500 pounds) and/or at airports.

• Following an analysis of the results of the data collection, determine whether to issue one of the following: an NPRM to require AED's on air carriers (with a maximum payload capacity of more than 7,500 pounds) and/or at airports; [1] a recommendation to Congress for legislation; or a notice in the **Federal Register** that would indicate why this action is not required.

• Issue a final rule within 120 days following the date on which comments are due on an NPRM. The Act includes a ''Good Samaritan'' provision that limits air carriers'' liability in obtaining medically qualified non-employee passengers to assist persons. The ''Good Samaritan'' provision limits non-employee passenger liability for providing assistance during an in-flight medical event unless the assistance is grossly negligent, or is willful misconduct.

In September 1998, in a letter sent to the Federal Air Surgeon, the Association of Flight Attendants (AFA) discussed the potential implications of the Act on its members.

On December 10, 1999, the FAA held a public meeting on airline workplace safety. Some flight attendants who spoke at the meeting stated that, based on their personal experiences in handling in-flight medical events, currently required emergency medical equipment needs to be enhanced.

[1] The Act requires the Administrator to make a decision on requiring AD's at airports, as well as on air carrier aircraft. The Act recognized that the decision on requiring the devices for airports may be in a form different than the decision for air carriers. As a result, the FAA decided to undertke separate efforts in gathering and analyzing information for airports and air carrier aircraft. A cardiac event on an aircraft occurs in a totally different environment from a cardiac event that occurs on an airport. This NPRM applies only to air carriers. A decision on whether or not to require AED's at airports will be issued separately.

A copy of the information provided to the FAA on the recommendations from the AsMA and the ATA Medical Panels, as well as a copy of the petition, the Act, and the AFA letter have been placed in the public docket established for this proposal. Information provided to the FAA at the December 10, 1999, public meeting is available under Docket number FAA–1999–6342.

July 1, 1998, to June 30, 1999, Data Collection

On July 1, 1998, the FAA initiated a data collection, as directed in the Act, to gather information on in-flight medical events that result in death or threat of death. The FAA developed a 1-page checklist, the ''In-Flight Medical Event Report,'' (the event report) designed for the use of nonmedical professionals such as crewmembers. (A copy is on file in the docket.) The FAA asked the ATA and several flight attendant unions to review the event report. The ATA agreed to distribute the event reports among its members, to collect any input received, and to forward it to the FAA on a quarterly basis. Up to 15 different ATA-member airlines, carrying approximately 85% of U.S. domestic airline passengers, contributed some data throughout the year.

The event report was intended to record incidents that were likely to be of cardiac origin and, thus, possibly require use of an AED. As other medical conditions may have similar symptoms, additional checklist choices were provided in an attempt to distinguish non-cardiac problems.

Based on the symptoms, treatment, and follow-up information on the event report, a general medical category was assigned to each event. In an effort to indicate more specifically when an AED may have been useful, a category also was assigned based only on symptom and in-flight treatment information. In some cases, this assignment was not possible because of the limited or incomplete information provided. A few reports included a specific follow-up diagnosis based on a hospital evaluation.

Data collected for the Act resulted in the submission of 188 in-flight medical event forms, not including 15 that were provided in an unusable format. Of the 188 events, 177 events occurred on the aircraft (either in flight, at the gate, or while taxiing), 10 events occurred on the ground (either in the jetway or the terminal) and one event occurred in a taxi enroute to the airport. A total of 108 deaths were reported (out of the 188 total events) either by the end of the flight or after the passenger was transferred to a hospital. Of the 80 remaining events, 14 passengers were reported as being alive, 56 were reported on the event report as ''Unknown,'' and 10 were submitted with no outcome reported.

Of the 177 events that occurred on the aircraft, 119 were thought to be of cardiac origin based on a review of all the information provided on the event reports. (The average age of those passengers on the aircraft with reported cardiac problems was 62 years.) Sixty-four of these 119 passengers were reported as having died. For the remainder, 42 passengers had unknown dispositions and 10 passengers were reported as having survived. Three events had unreported results.

The AED was used to deliver at least one shock in 17 separate events, 14 on the aircraft and three on the ground. From these events, four passengers were reported as having survived, 11 as having died, and two as having unknown outcomes. It is believed the AED use was the event that changed the outcome for those who were reported as having survived. For cardiac-related events on the aircraft, an AED was reported as ''Not available'' for 40 events, ''Not needed'' for 12 events, and ''Not reported'' for 40 events.

CPR was reportedly performed 82 times on the aircraft.

A total of 74 diversions for passenger medical emergencies were reported; 52 for cardiac events.

While not a primary focus of this data collection, aircraft emergency medical kit item usage also was reported: six uses of epinephrine and six uses of nitroglycerin. (Both epinephrine and nitroglycerin currently are required to be carried in the emergency medical kits.) Intravenous (IV) saline and atropine (neither currently required by the FAA but carried by some airlines) were reported used once each. All events reporting these medications were apparent cardiac problems.

Overall, 156 (of the total 188) events reported some type of medical assistance being provided on board the flight, although the actual number may be somewhat lower as it was impossible sometimes to determine whether a reported paramedic or emergency medical technician was a passenger or part of the ground response team. Physicians were reported available on the aircraft for 92 events, nurses for 49 events.

As is common when collecting this type of information, the data have multiple limitations. The accuracy of the data provided appeared highly variable, and analysis to assign a specific medical category often was difficult or impossible. Early in the data collection, various draft iterations of the event report were submitted that were slightly different from the final event report adopted for use. Because a limited data form was used (so that the data collection would not be overly burdensome), ambiguity with respect to precise symptom reporting was allowed. Reports often were incomplete, resulting in additional uncertainty about the type of event. Finally, no method exists for confirming whether participating air carriers reported every death or near-death event or whether privacy constraints may have limited the information in the event reports submitted to the FAA.

The availability of AED's changed through the year as more airlines began carrying them on their aircraft. For this reason, it was not possible to determine the number of aircraft carrying AED's at any point during the data collection. Additionally, the number of airlines submitting data varied for each quarter of data collection with some airlines reporting no events in later quarters. The survival rate may have been greater than the four possible lives saved if AED's had been aboard each aircraft of each participating air carrier throughout the data collection. If the survival rate during the test period had been higher, then the projected number of lives that potentially could be saved over time would be higher; however, this cannot be established from the data received during the July 1998-June 1999 timeframe.

In spite of these limitations, however, the FAA can conclude from the data collection that deaths occur on air carriers and that certain medical interventions can be useful and may change the outcome for some.

Given the normal circumstances of flight (e.g., reduced air pressure, reduced humidity, high ambient noise levels, reduced space, possible air turbulence, delayed access to the most effective hospital care, etc.) the aircraft is a difficult environment in which to treat a serious medical event, cardiac or otherwise. When serious medical incidents do occur in flight, however, having enhanced emergency medical equipment available may facilitate the response of flight attendants, and others who may volunteer to assist them.

General Discussion of the Proposal

The data collection revealed that four passengers who were administered at least one AED shock during flight survived and the FAA has confirmed that these passengers continue to survive. Subsequent to the data collection, further FAA investigation

has revealed that more passengers, and a flightcrew member, have had similar experiences. Therefore, the option of not requiring action appears inappropriate.

The FAA reviewed various ways of proposing this action before deciding on what it determined would be an appropriate course of action. In particular, the FAA considered an action that would amend 14 CFR part 91 to allow specifically the use of AED's on board aircraft. It was determined that this action would not be adequate, however, because it would not address issues such as maintenance and safe and appropriate usage of the device. The FAA determined that, to provide for the safe carriage and appropriate usage of AED's, it was necessary to amend part 121 to modify current emergency medical equipment and emergency medical training requirements to appropriately address AED usage.

Therefore, the FAA is proposing that all air carriers operating passenger-carrying airplanes under part 121 with a maximum payload capacity of more than 7,500 pounds, and required to have at least one flight attendant on board, take the following actions:

- Have at least one AED on board each flight.
- Require initial and recurrent training for all flight attendants on AED usage and in CPR.
- Require initial training for all pilots on the location of the AED and its instruction set.
- Enhance emergency medical kits to include the following additional medications: non-narcotic analgesic (such as acetaminophen, 325 mg, or ibuprofen, 200 mg, or equivalent); oral antihistamine (such as diphenhydramine, 25 mg or equivalent); aspirin (325 mg); atropine (0.5 mg, 5cc single dose ampule or equivalent); a bronchodilator inhaler (such as albuterol, metered dose inhaler or equivalent); lidocaine (5 cc, 20 mg/ml, injectable, single dose ampule or equivalent) and saline solution (500 cc) for intravenous infusion.
- Enhance emergency medical kits to include the following additional equipment: an IV administration kit with connectors (and, for placing the IV, alcohol sponges, tape, bandage scissors, and a tourniquet); a self-inflating manual resuscitation device with three sizes of masks (one pediatric, one small adult, one large adult), such as an AMBU bag; and three sizes of CPR masks (one pediatric, one small adult, one large adult).
- Require initial, familiarization training on enhanced emergency medical kit content for all crewmembers.

It should be noted that the decision to offer treatment or take other action (including safe diversion of the aircraft) is discretionary with the air carrier and its agents. While the FAA believes that this action is justified, it is also aware that adding enhancements to the medical kit could result in their unintentional misuse. Passenger expectations regarding the level of medical care should not be unrealistically raised by this action. Onboard medical assistance will continue to be discretionary as well as limited and must be regarded as emergency treatment with no unrealistic expectations of favorable outcomes for passengers having medical events in flight. The FAA believes that it is unrealistic to expect crewmembers to achieve the same level of proficiency as emergency medical personnel who perform medical procedures routinely on a daily basis.

It is recognized that the availability of these enhancements (equipment and medication) will not eliminate the logistical and medical difficulties experienced in attempting to treat a stricken passenger effectively while in flight. The intent of the regulation is to provide options for treatment, not to raise expectation in the passenger or physician community regarding the level of medical care available in flight.

Section-by-Section Discussion of the Proposal

The FAA proposes to amend 14 CFR part 121 by adding subpart X and by amending appendix A and the following sections: §§ 121.303, 121.309, 121.323, 121.325, 121.415, 121.417, 121.427. A minor editorial amendment is proposed for part 135 under § 135.177. These modifications are described below.

Section 121.303 Airplane Instruments and Equipment

Paragraphs (b) and (d) of § 121.303 currently address airworthiness requirements and operable conditions for airplane instruments and equipment. Under this proposal, paragraphs (b) and (d)(2), which reference other sections including § 121.309, would be modified to include a reference to proposed § 121.803.

Section 121.309 Emergency Equipment

Paragraph (d) of § 121.309 currently addresses first aid and emergency medical equipment and protective gloves. Under this proposal, the provisions would be moved to proposed subpart X, and paragraph (d) of § 121.309 would be removed and reserved.

Section 121.323 Instruments and Equipment for Operation at Night

Section 121.323 currently addresses instruments and equipment for operations at night. The introductory paragraph references other sections including § 121.309. Under this proposal, the introductory paragraph would be modified to include a reference to the proposed § 121.803.

Section 121.325 Instruments and Equipment for Operations Under IFR or Over-The-Top

Section 121.325 currently addresses instruments and equipment for operations under IFR or over-the-top. The introductory paragraph references other sections including § 121.309. Under this proposal, the introductory paragraph would be modified to include a reference to proposed § 121.803.

Section 121.415 Crewmember and Dispatcher Training Requirements

Paragraph (a)(3) currently requires each training program to provide ground training, including emergency training for crewmembers as specified in § 121.417. Under this proposal, paragraph (a)(3) would be modified to reference emergency training specified in both § 121.417 and proposed § 121.805.

Section 121.417 Crewmember Emergency Training

Paragraph (b)(2)(ii) currently requires, in part, that crewmembers receive individual instruction in the location, function, operation, and proper use of first aid equipment. Paragraph (b)(3)(iv) currently requires, in part, that crewmembers receive instruction in handling ''illness, injury, or other abnormal situations'' involving passengers or crewmembers and that this training include familiarization with the emergency medical kit. Under this proposal, the provisions would be modified and moved to proposed subpart X. Paragraphs (b)(2)(ii) and (b)(3)(iv) of § 121.417 therefore would be removed and reserved.

Section 121.427 Recurrent Training

Paragraph (b)(2) of § 121.427 currently requires recurrent training instruction, as necessary, in the subjects required for initial ground training by § 121.415(a), as appropriate, including emergency training (not required for aircraft dispatchers). Under this proposal, paragraph (b)(2) would be modified to reference emergency training specified in proposed § 121.805.

Subpart X Emergency Medical Equipment and Training

Under this proposal, subpart X would be added to part 121 to describe emergency medical equipment and requirements for instruction applicable to all certificate holders operating certain passenger-carrying airplanes. These requirements would include existing requirements for emergency medical equipment and training that would be modified and moved to this new subpart.

Section 121.803 paragraph (a) would adopt existing § 121.309(a) requirements and add the words ''unless authorized by the Administrator.'' These words would be added to cover situations in which an AED may be inoperable or not available for flight. In such cases, the certificate holder would have to obtain approval from the FAA principal operations inspector before operating a flight.

Section 121.803 paragraph (b) would adopt provisions of existing § 121.309 (b) regarding inspection, accessibility, and marking requirements for emergency equipment.

Section 121.803 paragraphs (c)(1) and (2) would require each passenger-carrying airplane to have approved first-aid kits and a modified emergency medical kit (in airplanes for which a flight attendant is required). The required minimum number of first-aid kits is specified under part 121, appendix A, as are the specifications and requirements for the emergency medical kit. This requirement is currently specified in paragraph (d) of § 121.309.

Paragraph (c)(3) of § 121.803 is a new provision that would require, in airplanes for which a flight attendant is required, an approved AED.

Paragraph (b)(2) of § 121.805 would include a provision that all crewmembers be instructed in the location, function, and operation of emergency medical equipment which, under the proposal, would include modified emergency medical kits and AED's. This requirement is currently specified in paragraph (b)(2)(ii) of § 121.417.

Paragraph (b)(3) of § 121.805 would include a provision that all crewmembers be instructed in the handling of emergency medical events involving passengers or crewmembers to include familiarization with the emergency medical kit, as modified under the proposal. This requirement is currently specified in paragraph (b)(3)(iv) of § 121.417.

Paragraph (b)(4) of § 121.805 would include additional provisions for flight attendants that would require appropriate instruction in the proper use of AED's; appropriate instruction in CPR; and appropriate recurrent training in the use of AED's and in CPR. All emergency medical training would have to be completed before 36 months after the effective date of the rule. The instruction required under proposed § 121.805(b)(4) would be in addition to the programmed hours of training required for flight attendants under § § 121.421 and 121.427.

Specific training-hour requirements are not proposed under this regulatory action. Since some air carriers have already voluntarily enhanced emergency medical response capabilities and have initiated and implemented specific training programs, it would be overly burdensome to try to standardize training. The FAA anticipates, however, that the initial and recurrent instruction that would be needed in CPR and in AED usage would conform to national programs conducted for ground-based trainees who initially certify and recertify in CPR procedures and AED usage. These national programs would include those offered, for example, by the American Heart Association or the American Red Cross. The FAA proposes that recurrent instruction in the proper use of AED's and in CPR procedures be conducted at least once every 24 months.

It is expected that some time will be required for air carriers to modify training programs, to enhance emergency medical kits and associated protocols, and to procure AED's. Therefore, the agency is proposing that a final rule take effect 36 months after publication. This would mean that the required training must be completed within 36 months after the effective date and before compliance is required.

Appendix A to Part 121-First-Aid Kits and Emergency Medical Kits

Appendix A sets forth the specifications and requirements for first-aid kits and emergency medical kits. Under this proposal, appendix A would be amended to include an AED and proposed enhancements to the emergency medical kit. The appendix also would be revised for overall clarity; specific amendments are described below.

''First-Aid Kits''

The reference to ''Federal Specification GG-K–391a'' would be deleted. This reference is obsolete as the specification was cancelled as of July 6, 1986. No changes are proposed for either the quantity of kits required or the content.

''Emergency Medical Kit''

This section would be amended to propose that the following be included in an approved emergency medical kit:

Medications: oral antihistamine, non-narcotic analgesic, aspirin, atropine, a bronchodilator, additional epinephrine, lidocaine, and saline for intravenous infusion.

Equipment: an IV administration kit with connectors (and, for placing the IV, alcohol sponges, tape, bandage scissors, and a tourniquet); a self-inflating manual resuscitation device with three sizes of masks (1 pediatric, 1 small adult, and 1 large adult), such as an AMBU bag; and three sizes of CPR masks (1 pediatric, 1 small adult, and 1 large adult).

Paragraph (4) under ''Emergency Medical Kits'' would be removed. This paragraph was added under 1994 action to require protective gloves. Because all affected air carriers have now complied with the requirement, the compliance date is no longer needed and may be removed. It should be noted, however, that the FAA proposes to change the reference to protective gloves from ''protective latex gloves or equivalent'' to ''protective nonpermeable gloves or equivalent.'' When the emergency medical kit action was first adopted, potential for allergic reaction to latex was not clear. Because there may be a potential for allergic reaction to latex, however, the FAA has determined that it would be best to remove the reference to latex under this action.

Rationale for Amending the Emergency Medical Kits

The FAA's study entitled ''The Evaluation of In-Flight Medical Care Aboard Selected U.S. Air Carriers from 1996 to 1997,'' reveals that an oral antihistamine (used mainly to relieve symptoms associated with allergies and hay fever), a non-narcotic analgesic (used mainly to relieve muscle aches and headaches), and a bronchodilator inhaler (used to help restore normal breathing in asthmatics) are appropriate for inclusion in air carrier emergency medical kits.

The FAA consulted with the University of Oklahoma, Department of Biostatistics and Epidemiology in analyzing the data received for this study. Frequency response and contingency analyses were performed, giving special attention to items that are not part of the currently mandated emergency medical kit that were used during in-flight medical events. If such items appeared to have been obtained and used frequently, it suggested that they should be considered for inclusion.

Upon review of the data, researchers determined that additional items should be considered for inclusion in the medical kit if the item was used in more than 1 or 2 percent of all cases. After identifying items that might be considered for inclusion in the medical kit, their effect on in-flight medical care was investigated. Of those items that potentially could be added to the kit, a bronchodilator inhaler and an oral antihistamine appeared to have the greatest effect on passengers; analgesic therapy also showed effective results.

The recent data collection mandated by the Act did not reveal a need for any further modification of the emergency medical kits. Nitroglycerin and epinephrine, already required items, were the medications most commonly reported as being used. Atropine and IV saline were used one time each.

Because the FAA proposes to require AED carriage, however, it is appropriate to require the following items in the emergency medical kits that might be useful to medical personnel who may treat a stricken passenger(s):

Aspirin: a general oral medication that may be needed to alleviate head and muscle aches and, possibly, a cardiac event.

Atropine: a drug, most effectively administered intravenously and used to increase heart rate, that may be needed to assist a passenger with an unstable cardiac rhythm.

Lidocaine: a drug, most effectively administered intravenously, that may be needed in cases of unresponsiveness to defibrillation and possibly for maintenance of normal heart rhythm after successful defibrillation.

An IV administration kit with connectors (and, for placing the IV, alcohol sponges, tape, bandage scissors, and a tourniquet): for administering IV drugs (e.g., atropine or lidocaine) that may be needed to sustain heart function.

A self-inflating manual resuscitation bag (with 3 masks: 1 pediatric, 1 small adult, and 1 large adult): that may be needed for continuation of respiratory support.

CPR masks (1 pediatric, 1 small adult, 1 large adult): that may be needed if CPR is required.

The FAA has determined that these additions are justified based on the proposed addition of the AED and on best medical practice. It should be noted that an additional preparation of epinephrine, a drug that may be used for heart stimulation, also is being proposed. This additional preparation is intended to complement the dosage of epinephrine currently required which is intended for use as a muscle relaxant.

Comments on these proposed additions to the emergency medical kits are specifically invited.

''Approved'' first-aid kit and ''approved'' emergency medical kit would continue to mean that the FAA principal operations inspector assigned to the holder of an operating certificate exercises approval for the Administrator, as appropriate, of equipment to be carried aboard a certificate holder's aircraft.

''Automated External Defibrillator''

This section would be added to set forth AED specifications. Currently, AED's are powered by primary (not rechargeable) lithium batteries. Safety of these batteries is stressed because extremely energetic materials are used in lithium cells and they are not intrinsically safe. Safety concerns include the possibility of fire, explosion, and the venting of toxic or flammable gases. In this regard, and given the limitations of the aircraft environment, AED carriage on aircraft presents special circumstances in terms of the storage of the device and proper maintenance. Therefore, certificate holders must be vigilant about inspecting and visually checking the device and its battery on a regular basis. The FAA proposes to enhance the level of safety by requiring that certificate holders comply with all requirements in applicable Flight Standards Information Bulletins for Airworthiness, such as the one for medical portable electronic devices (FSAW 98–05), and in applicable Technical Standard Orders, such as the one for lithium batteries (FAA TSO–C142).

''U.S. Food and Drug Administration-approved AED'' would mean that the U.S. Food and Drug Administration has approved the device for medical use and that the device conforms to its standards. ''Otherwise approved by the Administrator'' would mean that certificate holders would have to seek individual approval from FAA principal operations inspectors for power sources for which an FAA TSO does not exist.

Section 135.177 Emergency Equipment Requirements for Aircraft Having a Passenger Seating Configuration of More Than 19 Passengers

This section would be amended to remove the obsolete reference to ''Federal Specification GG–K–391a'' and to generally conform to clarifying language proposed for part 121, appendix A. No content changes are proposed under this action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to review International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP's) and to comply to the maximum extent possible.

ICAO Standard (Annex 6, Part 1, Chapter 6, Section 6.2.2) states that airplanes shall be equipped with ''accessible and adequate medical supplies appropriate to the number of passengers the aeroplane is authorized to carry.'' ICAO Recommended Practice (Annex 6, Part 1, Chapter 6, Section 6.2.2) states that medical supplies should comprise ''one or more first-aid kits'' and ''a medical kit for the use of medical doctors or other qualified persons in treating in-flight medical emergencies for aeroplanes authorized to carry more than 250 passengers.'' Attachment B to this Recommended Practice lists, in part, the ''typical contents'' of first-aid kits and emergency medical kits.

Part 121, Appendix A, as currently drafted, complies with these ICAO SARP's insofar as first-aid kits and emergency medical kits are required to be carried. Part 121, Appendix A does not include all ICAO-recommended emergency medical kit items under ICAO Attachment B, however, and does not specify who is authorized to use the emergency medical kit.

The FAA proposes to add to the emergency medical kits those items warranted for inclusion as a result of its study entitled ''The Evaluation of In-Flight Medical Care Aboard Selected U.S. Air Carriers from 1996 to 1997'' and those items necessary to support AED protocol. The FAA concurs with the recommendation that emergency medical kits be used by qualified and trained personnel only. Adding such a requirement to part 121, however, would involve defining the various medical specialties and, perhaps, limiting access to the extent that the only person available to assist on a flight might not be included.

ICAO Standard (under Annex 6, Part 1, Chapter 12, Section 12.4) states, in part, that cabin attendants shall complete training programs that ensure that each person is ''drilled and capable

in the use of emergency and life-saving equipment required to be carried, such as . . ., first-aid kits.'' Existing § 121.417 and proposed 121.805 comply with these ICAO guidelines.

ICAO SARPS do not address AED usage on aircraft.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined this proposed rule is a ''significant regulatory action'' under section 3 (f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This proposed rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities. Furthermore, this proposal would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Benefits

The proposed rule is intended to require equipment that might preserve the lives of passengers who have serious cardiac medical events on board commercial airplanes operating under part 121 for which a flight attendant is required and with a maximum payload of more than 7,500 pounds. This proposal would require certain passenger-carrying air carrier operators to carry AED's on board their aircraft and to augment currently required emergency medical kits with additional medications and medical equipment. Another requirement of this proposal is to augment the emergency medical training of crewmembers, in particular flight attendants and those who may assist them, for responding to in-flight medical events.

Medical reporting shows that the chances of surviving ventricular fibrillation, a critical cardiac event, are enhanced by the application of AED technology. Aero-medical groups have recommended placing AED's on board airplanes and the experiences of airlines that already carry AED's have been positive. Up to 15 different Air Transport Association members participated in a 1-year in-flight medical event data collection effort in cooperation with the FAA. This effort was in response to one of the provisions of the Aviation Medical Assistance Act of 1998. The data were collected for the period July 1, 1998, through June 30, 1999. There were 188 death or threat-of-death incidents resulting in a total of 108 deaths. (It should be noted that 11 of these incidents occurred on the ground.) AED's were used a total of 17 times, 14 times to deliver at least one shock on board an aircraft. From these events, four passengers were reported as having survived. Assuming the four passengers survived due to the use of AED's, the AED survival rate per hundred million passenger enplanements is 0.7193. The survival rate may have been different if AED's had been aboard all participating carriers' aircraft for the entire data collection period. If the survival rate during the test period had been higher, then the projected number of lives saved over the next 10 years would be higher. However, since this number cannot be established from the available data, the FAA will use the conservative projection.

Applying the survival rate to the estimated 7.5819 billion enplaned passengers over the next 10 years may result in 55 passenger medical event outcomes being changed by AED's during that period.

The FAA acknowledges the difficulty of quantifying benefits with any precision at this stage of the rulemaking. The FAA also believes that there is merit in continuing to collect data on in-flight medical incidents. Therefore, the FAA may propose in the future that data be collected on all uses of the emergency medical kits and AED's by the certificate holder or its agents. This data would be used to further refine the contents of and training for the use of the medical kits and the AED's. Data would be collected directly from the certificate holders in a manner prescribed by the Administrator. The FAA seeks comment on the need for further data collection. The FAA may also issue a supplementary notice to elicit comments on a specific proposed data collection.

Costs

The FAA has analyzed the expected costs of this regulatory proposal for a 10-year period, 2000 through 2009. All costs in this analysis are expressed in 1998 dollars.

The estimated industry costs over 10 years total $138.1 million, or $95.6 million discounted. These costs consist of the initial cost to equip the aircraft, for carriers who have not voluntarily placed AED's and emergency medical kits aboard their aircraft; the cost of equipping new aircraft that the industry will add to the fleet over the next 10 years; the cost of maintaining the equipment and replacing medications, and the weight penalty cost of carrying the additional equipment. In addition, the carriers will incur the cost of initially training flight attendants in the proper usage of the AED's and for recurrent training. The cost of AED's is estimated at $26.7 million, ($20.2 million discounted); the cost of upgrading the emergency medical kits at $4.0 million, ($2.8 million discounted); and additional fuel is estimated to cost $4.4 million, ($3.0 million discounted). The training of flight attendants is estimated to cost $103.0 million, ($69.7 million discounted).

The flight attendants receiving the training as a result of this proposal would probably view this as enhancing their job skills and could lead to efforts to raise their wages based on this perception. The FAA has no basis for estimating this possible impact on industry costs. Public comments are invited; the FAA requests that all comments be accompanied by clear and detailed economic documentation.

Cost-Benefit Analysis

If the proposed rule becomes effective, the FAA estimates that as many as 55 passenger medical outcomes could possibly be changed over the next 10 years. Based on the estimated cost of $138.1 million and an estimated 55 lives possibly saved, the rule is estimated to cost $2.5 million per life saved.

Approximately $88 million of the total cost will be borne by the air carriers that have voluntarily placed the AED's and expanded emergency medical kits aboard their aircraft principally due to the cost of recurrent training of flight attendants. The cost to major carriers that currently do not carry this equipment is estimated at $39 million and small carriers would incur a cost of $11 million as a result of this proposal.

The FAA invites public comments and requests that all comments be accompanied with clear and detailed economic documentation.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605 (b) of the 1980 act provides that the head of the agency may so certify and a RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration suggests that ''small'' represent the impacted entities with 1,500 or fewer employees. For this proposed rule, the small entity group is considered to be part 121 operators (Standard Industrial Classification Code 4512) with 1,500 or fewer employees. The FAA has identified a total of 60 operators that meet this definition.

To determine the impact of the proposed rule on small part 121 operators, the FAA has estimated the annualized cost impact on each of those small entities potentially impacted by the proposed rule. The proposed rule is expected to impose an estimated cost of $10.9 million on the 60 small entities over the next 10 years. The annualized cost per small operator is estimated at $18,300. This amount represents less than one-tenth of the annual cost ($265,300, in 1998 dollars) to small operators that the FAA considers economically significant in that it may entail either an increase in airline ticket fares or a requirement to create operating cost efficiencies to preserve the economic stability of impacted airlines. None of the 60 part 121 small entities would incur a substantial economic impact in the form of higher annual costs in excess of $265,300, as the result of the proposed rule.

Therefore, the FAA has determined that this proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605 (b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

A number of foreign carriers carry AED's and enhanced emergency medical kits on flights to and from the United States. U.S. carriers that have voluntarily upgraded their emergency medical equipment account for a majority of the U.S.-flag international service.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.''

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 2 U.S.C. (the Act), codified in 2 U. S. C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a) requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121 and 135 of Title 14, Code of Federal Regulations (14 CFR parts 121 and 135) as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711,

44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend § 121.303 by revising paragraphs (b) and (d)(2) to read as follows:

§ 121.303 Airplane instruments and equipment.

* * * * *

(b) Instruments and equipment required by §§ 121.305 through 121.359 and 121.803 must be approved and installed in accordance with the airworthiness requirements applicable to them.

* * * * *

(d) * * *

(2) Instruments and equipment specified in §§ 121.305 through 121.321, 121.359, 121.360, and 121.803 for all operations, and the instruments and equipment specified in §§ 121.323 through 121.351 for the kind of operation indicated, wherever these items are not already required by paragraph (d)(1) of this section.

* * * * *

§ 121.309 [Amended]

3. Amend § 121.309 by removing and reserving paragraph (d).

4. Amend § 121.323 by revising the introductory text to read as follows:

§ 121.323 Instruments and equipment for operations at night.

No person may operate an airplane at night under this part unless it is equipped with the following instruments and equipment in addition to those required by §§ 121.305 through 121.321 and 121.803:

* * * * *

5. Amend § 121.325 by revising the introductory text to read as follows:

§ 121.325 Instruments and equipment for operations under IFR or over-the-top.

No person may operate an airplane under IFR or over-the-top conditions under this part unless it is equipped with the following instruments and equipment, in addition to those required by §§ 121.305 through 121.321 and 121.803:

* * * * *

6. Amend § 121.415 by revising paragraph (a)(3) to read as follows:

§ 121.415 Crewmember and dispatcher training requirements.

(a) * * *

(3) For crewmembers, emergency training as specified in § § 121.417 and 121.805.

* * * * *

§ 121.417 [Amended]

7. Amend § 121.417 by removing and reserving paragraphs (b)(2)(ii) and (b)(3)(iv).

8. Amend § 121.427 by revising paragraph (b)(2) to read as follows:

§ 121.427 Recurrent training.

* * * * *

(b) * * *

(2) Instruction as necessary in the subjects required for initial ground training by § § 121.415(a) and 121.805, as appropriate, including emergency training (not required for aircraft dispatchers).

* * * * *

9. Amend part 121 by adding subpart X to read as follows:

Sec.

Subpart X—Emergency Medical Equipment and Training 121.801 Applicability.

121.803 Emergency medical equipment.
121.805 Crewmember training for in-flight medical events.

Subpart X—Emergency Medical Equipment and Training

§ 121.801 Applicability.

This subpart prescribes the emergency medical equipment and training requirements applicable to all certificate holders operating passenger-carrying airplanes under this part.

§ 121.803 Emergency medical equipment.

(a) No person may operate a passenger-carrying airplane under this part unless it is equipped with the emergency medical equipment listed in this section or unless authorized by the Administrator.

(b) Each equipment item listed in this section—

(1) Must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes;

(2) Must be readily accessible to the crew and, with regard to equipment located in the passenger compartment, to passengers;

(3) Must be clearly identified and clearly marked to indicate its method of operation; and

(4) When carried in a compartment or container, must be carried in a compartment or container marked as to contents and the compartment or container, or the item itself, must be marked as to date of last inspection.

(c) For treatment of injuries, medical events, or minor accidents that might occur during flight time each airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(1) Approved first-aid kits.

(2) In airplanes for which a flight attendant is required, an approved emergency medical kit, as modified effective [36 months after the effective date of the final rule.]

(3) In airplanes for which a flight attendant is required and with a maximum payload capacity of more than 7,500 pounds, an approved automated external defibrillator as of [36 months after the effective date of the final rule].

§ 121.805 Crewmember training for in-flight medical events.

(a) Each training program must provide the instruction set forth in this section with respect to each airplane type, model, and configuration, each required crewmember, and each kind of operation conducted, insofar as appropriate for each crewmember and the certificate holder.

(b) Training must provide the following:

(1) Instruction in procedures for responding to medical events including coordination among crewmembers.

(2) Instruction in the location, function, and operation of emergency medical equipment.

(3) Instruction in the handling of medical events involving passengers or crewmembers to include familiarization with the emergency medical kit, as modified on [36 months after the effective date of the final rule].

(4) For each flight attendant—

(i) Instruction in the proper use of automated external defibrillators, in addition to the programmed hours of instruction required by § 121.421(c).

(ii) Instruction in cardiopulmonary resuscitation, in addition to the programmed hours of instruction required by § 121.421(c).

(iii) Recurrent training in the proper use of automated external defibrillators and in cardiopulmonary resuscitation, at least once every 24 months, in addition to the instruction required by § 121.427(c).

10. Revise Appendix A to part 121 as follows:

Appendix A to Part 121—First-aid Kits and Emergency Medical Kits

Approved first-aid kits, at least one approved emergency medical kit, and at least one approved automated external defibrillator required under § 121.803 of this part must be readily accessible to the crew, stored securely, and kept free from dust, moisture, and damaging temperatures.

First-Aid Kits

1. The minimum number of first-aid kits required is set forth in the following table:

Number of passenger seats	Number of first-aid kits
0–50	1
51–150	2
151–250	3
More than 250	4

2. Except as provided in paragraph (3), each approved first-aid kit must contain at least the following appropriately maintained contents in the specified quantities:

Contents	Quality
Adhesive bandage compresses, 1-inch	16
Antiseptic swabs	20
Ammonia inhalants	10
Bandage compresses, 4-inch	8
Triangular bandage compresses, 40-inch	5
Arm splint, noninflatable	1
Leg splint, noninflatable	1
Roller bandage, 4-inch	4
Adhesive tape, 1-inch standard roll	2
Bandage scissors	1

3. Arm and leg splints which do not fit within a first-aid kit may be stowed in a readily accessible location that is as near as practicable to the kit.

Emergency Medical Kits

1. At least one approved emergency medical kit that must contain at least the following appropriately maintained contents in the specified quantities:

Contents	Quantity
Sphygmomanometer	1
Stethoscope	1
Airways, oropharyngeal (3 sizes): 1 pediatric, 1 small adult, 1 large adult	3
Self-inflating manual resuscitation device with 3 masks (1 pediatric, 1 small adult, 1 large adult)	1:3 masks
CPR mask (3 sizes), 1 pediatric, 1 small adult, 1 large adult [1]	3
IV Admin Tubing w/2 Y connectors: [1]	1 set
Alcohol sponges [1]	2
Adhesive tape, 1-inch standard roll adhesive [1]	1
Tape scissors [1]	1 pair
Tourniquet [1]	1
Saline solution, 500 cc [1]	1
Protective nonpermeable gloves or equivalent	1 pair
Needles (2–18 ga., 2–20 ga., 2–22 ga., or sizes necessary to administer required medications)	6
Syringes (1–5 cc, 2–10 cc, or sizes necessary to administer required medications	4
Analgesic, non-narcotic, tablets,[1] 325 mg	4
Antihistamine tablets,[1] 25 mg	4
Antihistamine injectable, 50 mg, (single dose ampule or equivalent	2
Atropine, 0.5 mg, 5 cc (single dose ampule or equivalent) [1]	2
Aspirin tablets, 325 mg [1]	4
Bronchodilator, inhaled [1] (metered dose inhaler or equivalent)	1
Dextrose, 50%/50 cc injectable, (single dose ampule or equivalent)	1
Epinephrine 1:1000, 1 cc, injectable, (single dose ampule or equivalent)	2
Epinephrine 1:10,000, 2 cc, injectable, (single dose ampule or equivalent)	2
Lidocaine, 5 cc, 20 mg/ml, injectable (single dose ampule or equivalent) [1]	2
Nitroglycerin tablets, 0.4 mg	10
Basic instructions for use of the drugs in the kit	1

[1] Required on and after [36 months after the effective date of the final rule.]

Automated External Defibrillators

At least one U.S. Food and Drug Administration-approved automated external defibrillator that must:

1. Be stored in the passenger cabin.

2. Meet FAA Technical Standard Order requirements for power sources for electronic devices used in aviation or be otherwise approved by the Administrator.

3. Be maintained in accordance with the manufacturer's specifications.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

11–12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

13. Amend § 135.177 by revising paragraph (a)(1) to read as follows:

§ 135.177 Emergency equipment requirements for aircraft having a passenger seating configuration of more than 19 passengers.

(a) * * *

(1) At least one approved first-aid kit for treatment of injuries likely to occur in flight or in a minor accident that must:

(i) Be readily accessible to crewmembers.

(ii) Be stored securely and kept free from dust, moisture, and damaging temperatures.

(iii) Contain at least the following appropriately maintained contents in the specified quantities:

Contents	Quantity
Adhesive bandage compresses, 1-inch	16
Antiseptic swabs	20
Ammonia inhalants	10
Bandage compresses, 4-inch	8
Triangular bandage compresses, 40-inch	5
Arm splint, noninflatable	1
Leg splint, noninflatable	1
Roller bandage, 4-inch	4
Adhesive tape, 1-inch standard roll	2
Bandage scissors	1
Protective nonpermeable gloves or equivalent	[1]1

[1] Pair.

* * * * *

Issued in Washington, D.C., on May 18, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 00–12982 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
May 24, 2000

Part VI

Federal Reserve System

Department of the Treasury

Fiscal Service

Policy Statement on Payments System Risk: Modifications to Daylight Overdraft Posting Procedures; Treasury Tax and Loan Program Enhancements; Notices

FEDERAL RESERVE SYSTEM

[Docket No. R–1068]

Policy Statement on Payments System Risk: Modifications to Daylight Overdraft Posting Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement.

SUMMARY: The Board has adopted changes to the procedures for measuring daylight overdrafts. Posting times for Treasury Investment Program transactions have been added to these procedures to implement program changes announced by Department of the Treasury in today's **Federal Register**.

EFFECTIVE DATE: July 10, 2000 for transitional posting procedures and November 2, 2000 for final posting procedures.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Manager (202/452–3219), Stacy Coleman, Financial Services Analyst (202/452–2934), or Donna DeCorleto, Project Leader (202/452–3956), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only:* Telecommunications Device for the Deaf, Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

The Board's Policy Statement on Payments System Risk establishes maximum limits (net debit caps) and fees on daylight overdrafts in depository institutions' accounts at Federal Reserve Banks. The Federal Reserve measures depository institutions' intraday account balances according to a set of ''posting rules'' established by the Board. These rules comprise a schedule for the posting of debits and credits to institutions' Federal Reserve accounts for different types of payments.[1] The Board's objectives in designing the posting rules include minimizing intraday float, facilitating depository institutions' monitoring and control of their cash balances during the day, and reflecting the legal rights and obligations of parties to payments. The Board has established daylight overdraft posting times for the new Treasury Investment Program (TIP) transactions based on these objectives.

The Federal Reserve will implement TIP on July 10, 2000, to replace the Treasury Tax and Loan (TT&L) system. The Reserve Banks, as fiscal agents and depositories of the United States, act on behalf of the Department of the Treasury (Treasury) to collect Federal taxes and invest excess Treasury balances with depository institutions. The Reserve Banks use the TT&L system to collect and invest Federal tax proceeds and to monitor the collateral pledged by institutions.[2] TT&L is primarily an end-of-day batch processing system implemented in the mid-1980s to process paper-based tax payments.

In 1993, the North American Free Trade Agreement Implementation Act (NAFTA) required Treasury to begin an orderly conversion from its paper-based system to an electronic tax collection system to accelerate the availability of its funds. In 1996, Treasury introduced the Electronic Federal Tax Payment System (EFTPS) to offer taxpayers electronic payment alternatives, such as the Automated Clearing House (ACH) and Fedwire.[3] The Reserve Banks modified the TT&L automated application to accept and invest tax proceeds collected through EFTPS. The aging technology of the TT&L application, however, limited opportunities to automate tax collection further. As a result, the Reserve Banks worked with Treasury to design the TIP application to support Treasury's changing tax collection and investment requirements.

Treasury envisioned an all-electronic tax collection system when TIP was developed but later determined that a paper-based tax payment alternative should be available to smaller business taxpayers.[4] At Treasury's request, the Federal Reserve developed the Paper Tax System (PATAX) to accommodate paper-based tax payments. The Federal Reserve will implement the TIP and PATAX applications concurrently.

An important feature of the TIP application is its ability to receive and process data from interfacing applications in real time. Throughout the day, TIP will receive and process payment information from EFTPS, the Federal Reserve Electronic Tax Application (FR–ETA), and PATAX, and collateral information from the National Book-Entry System (NBES) and the Definitive Safekeeping System (DSS). The Federal Reserve will adjust the total Treasury balances at depository institutions based on Treasury's cash needs and depository institutions' willingness and ability to collateralize Treasury investments. In addition, TIP will monitor the value of collateral pledged to protect government monies held at depository institutions for other Treasury purposes besides tax collections and investments.[5] The Federal Reserve will be able to reduce those balances at depository institutions if the value of collateral is insufficient to protect those monies.

TIP-Related Daylight Overdraft Posting Rule Changes

Unlike TT&L, TIP will process transactions throughout the day and depository institutions will be able to access information on the status of TIP transactions destined for their Federal Reserve accounts through their FedLine terminals.[6] Therefore, in accordance with the Board's objective to minimize intraday float, the Board believes the TIP transactions should post to depository institutions' accounts in real time throughout the day.

Currently, because TT&L is primarily an end-of-day batch processing system, the Reserve Banks post TT&L transactions resulting in debits to depository institutions' accounts after the close of Fedwire. TIP will process transactions throughout the day, however, allowing the Reserve Bank to post TIP-related transactions on a flow basis in order to match more closely the actual TIP processing times. In the near term this change could make controlling daylight overdrafts related to some TIP transactions more challenging for depository institutions. For example, with near real-time posting under TIP, a large debit transaction could post to a depository institution's account early in the day and create a considerable daylight overdraft. Under TT&L, the debit transaction would post after the close of Fedwire, providing the depository institution ample time to

[1] See ''Federal Reserve Policy Statement on Payments System Risk,'' section I.A (57 FR 47093, October 14, 1992).

[2] 31 CFR part 203 ''Payment of Federal Taxes and the Treasury Tax and Loan Program'' requires that TT&L depositaries pledge to Treasury sufficient collateral to protect the uninsured portion of Treasury tax proceeds and the full value of Treasury investments held at the depositaries.

[3] For purposes of this notice, ''Fedwire'' refers to the electronic funds transfer system owned and operated by the Federal Reserve System. See 31 CFR part 203 for further detail regarding electronic tax payment alternatives.

[4] Treasury currently requires that business taxpayers with an annual tax liability of $200,000 or more pay their income, withholding, and other federal taxes by electronic means no later than the tax due date. Other taxpayers are encouraged to use electronic means, but have the option of submitting their tax payment information using a paper Federal Tax Deposit (FTD) coupon. See 26 CFR parts 1, 20, 25, 31, and 40 regarding ''Electronic Funds Transfers of Federal Deposits.''

[5] Government monies can be held at depository institutions for a variety of reasons. Initially, TIP will monitor collateral pledged pursuant to 31 CFR part 202 ''Depositaries and Financial Agents of the Government'' and 31 CFR part 203.

[6] FedLine is the Federal Reserve's proprietary PC software that offers depository institutions access to Federal Reserve services such as accounting, ACH, book-entry, cash, check, statistical reporting, funds transfer, and Treasury services.

fund its account. As a result, depository institutions may find managing their daylight overdrafts more difficult until they become familiar with TIP's processing patterns.

The Board recognizes that depository institutions may need time to change the systems or procedures they use to fund their accounts and monitor their tax payment flows. For this reason, the Board will introduce the TIP-related posting rule changes for most transactions resulting in debits to depository institutions' accounts in two phases.[7] To allow sufficient time for depository institutions to adjust to the various operational changes associated with TIP, initially the Federal Reserve will post most transactions resulting in debits to depository institutions' accounts after the close of Fedwire. Approximately four months after the implementation of TIP, on November 2, 2000, the Federal Reserve will post all transactions resulting in debits to depository institutions' accounts on a flow basis as TIP processes them. The Board believes that this approximate four-month transition period, which covers a full quarterly business tax payment cycle, provides depository institutions with sufficient time to identify the effects of and adjust to the new debit timing patterns that TIP creates.

Debits to Depository Institutions [8]

After-the-Close-of-Fedwire Posting

Beginning July 10, 2000 the Federal Reserve will post the TIP transactions listed below, resulting in debits to depository institutions' Federal Reserve accounts, after the close of Fedwire. The Reserve Banks will provide depository institutions with information on their TIP transactions through FedLine, which will allow depository institutions to observe and become familiar with the actual TIP processing cycles. Beginning November 2, 2000, the Reserve Banks will post these transactions on an intraday basis to reflect more closely the actual TIP processing times. Unless stated otherwise in this notice, the Reserve Banks will begin posting TIP-related transactions at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.[9]

Main Account System-Initiated Balance Limit Withdrawal. This transaction withdraws from a depository institution's account any amount that exceeds its balance limit. A depository institution's balance limit is the amount of Treasury funds that it is willing to accept as investments and may be changed at any time.

Main Account System-Initiated Collateral Deficiency Withdrawal. This transaction withdraws from a depository institution's account any amount that is not protected by collateral.

Main Account Treasury Withdrawal. This transaction withdraws some or all of Treasury's invested balances from a depository institution's Federal Reserve account.[10] TIP will process the transactions on the date and time specified by Treasury. The Federal Reserve will post future-day withdrawals at 8:30 a.m. ET on the settlement day designated by Treasury, same-day withdrawals announced by 11:30 a.m. ET at 1:00 p.m. ET, and same-day withdrawals announced by 6:15 p.m. ET after the close of Fedwire.[11]

31 CFR Part 202 Collateral Deficiency Withdrawal. Under 31 CFR part 202 (formerly called Circular 176), Treasury permits authorized depository institutions to hold fully collateralized deposits of public monies for government agencies. Under TIP, Treasury has centralized the monitoring of the collateral pledged to protect 31 CFR part 202 deposits and requires that collateral be assessed at market value. At the discretion of the depositing government agency, this transaction will withdraw from the depository institution's account any amount not protected by collateral. TIP will identify deficiencies between 7:00 a.m. and 6:00 p.m. ET, and the Reserve Bank will work with the depository institutions and the depositing government agencies to resolve the deficiencies. If a deficiency is not corrected before the end of the day, the Federal Reserve may debit the depository institution's account for the uncollateralized amount.

Near Real-Time Posting

Beginning July 10, 2000, the Federal Reserve will post the TIP transactions listed below, resulting in debits to depository institutions' account balances, on an intraday basis during the day as soon as TIP processes them. The Board does not believe depository institutions require a transitional period for these transactions' posting times given their relatively small dollar value.

Uninvested PATAX Tax Deposit. This transaction withdraws from depository institutions' accounts the proceeds of PATAX tax collections that will not be invested with those institutions. The Reserve Banks will post these transactions beginning at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.

Penalty for Tax Payments. Treasury will use this transaction to assess a penalty any time that a depository institution accepts a timely payment from a taxpayer, but submits the payment to the Treasury late. Every Thursday night, the Reserve Banks will identify and notify depository institutions of their Treasury-authorized penalties.[12] The Reserve Banks will calculate the penalty for each depository institution and post the debit to the depository institution's account at 8:30 a.m. ET on the following business day.

Credits to Depository Institutions

Beginning July 10, 2000, the Federal Reserve will post the TIP transactions listed below, resulting in credits to depository institutions' accounts, on an intraday basis during the day as soon as TIP processes them.

Dynamic Investment. The Dynamic Investment is a new transaction that will invest excess Treasury funds with depository institutions that want the funds and have sufficient collateral to protect the investment.[13] The Reserve Banks will post these transactions beginning at 12:30 p.m. ET and on an hourly basis, on the half-hour, thereafter.

FR–ETA Value Fedwire Investment. The FR–ETA Value Fedwire Investment is a new transaction that will return to depository institutions, as a Treasury investment, the tax proceeds that the institutions sent to Treasury through a FR–ETA Value Fedwire transaction (31 CFR 203.2). TIP will identify those FR–

[7] The Reserve Banks will post small-dollar transactions, such as uninvested PATAX tax deposits and penalties for tax payments, on a flow basis as they are processed beginning July 10, 2000. The posting rules for these transactions will not change in the second phase.

[8] The Board has not modified the posting rules for existing TT&L transactions unless specifically referenced in this notice.

[9] While TIP begins processing transactions as early as 6 a.m. ET, the Federal Reserve will not begin posting transactions until 8:30 a.m. ET in order to match the initial posting of other non-wire transactions and to allow depository institutions time to manage or fund their accounts.

[10] The balances that Treasury invests with depository institutions are payable on demand without prior notice. Treasury may announce these balance withdrawals, however, hours or days in advance. See 31 CFR 203.23.

[11] On rare occasions, the Treasury may announce withdrawals in advance that are based on depository institutions' closing balances on the withdrawal date. The Federal Reserve will post these withdrawals after the close of Fedwire.

[12] In the event that Thursday is a holiday, the Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[13] Depository institutions specify the times of day and the amount of funds they are willing to accept as investments. Funds are distributed pro-rata based on depository institutions' capacity levels.

ETA tax payments that were sent by Retainer or Investor institutions with unused capacity and will invest the funds with those Retainer or Investor institutions.[14] The Reserve Banks will post these transactions beginning at 9:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.[15]

Penalty Abatement. The Penalty Abatement is a new transaction that Treasury will use to return money paid previously as penalties by a depository institution to Treasury. In the event that a depository institution provides evidence that the Treasury charged it incorrectly, Treasury may return the penalty money to the depository institution. The Reserve Banks will process and post Penalty Abatements on Thursdays at 6:30 p.m. ET.[16]

Main Account Administrative Investment and SDI Administrative Investment. These transactions are administrative or correcting entries that Reserve Banks will occasionally make to depository institutions' Main Accounts or Special Direct Investment Accounts.[17] For example, after two entities merge, the Reserve Banks would use one of the Main Account Administrative Investment transactions to move the non-survivor's TIP account balance to the survivor's account.[18] The Reserve Banks will post these transactions at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.

31 CFR Part 202 Account Deposits. The 31 CFR part 202 Account Deposit is a new transaction that will place public monies with depository institutions authorized by Treasury to accept these deposits, but only after TIP confirms that the depository institutions have pledged sufficient collateral to protect these deposits. Based on Treasury's or the depositing agency's instruction, the Reserve Banks will post these transactions at 8:30 a.m. ET and on an hourly basis, on the half-hour, thereafter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the policy statement under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the policy statement.

Policy Statement on Payments System Risk

1. The ''Federal Reserve Policy Statement on Payments System Risk'' (57 FR 47093, October 14, 1992), section I.A., under the heading ''*Modified Procedures for Measuring Daylight Overdrafts* '' is amended, effective *July 10, 2000*, as follows with changes identified by *italics*:

I. Federal Reserve Policy

A. Daylight Overdraft Definition

* * * * *

Modified Procedures for Measuring Daylight Overdrafts[3]

Opening Balance (Previous Day's Closing Balance)

Post at 8:30 a.m. Eastern Time:
- +/− Government and commercial ACH credit transactions
- +Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH credit transactions
- + Advance-notice Treasury investments
- + Treasury state and local government series (SLGs) interest and redemption payments
- + Treasury checks, postal money orders, local Federal Reserve Bank checks, and EZ-Clear savings bond redemptions in separately sorted deposits
- − *Penalty Assessments for tax payments from the Treasury Investment Program (TIP)*[4]

Post at 8:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
- + *Main Account Administrative Investment from TIP*
- + *SDI (Special Direct Investment) or Administrative Investment from TIP*
- + *31 CFR part 202 Account Deposits from TIP*
- − *Uninvested PATAX Tax Deposits from TIP*

Post Throughout Business Day:
- +/− Fedwire funds transfers
- +/− Fedwire book-entry securities transfers
- +/− Net settlement entries[5]

Post by 9:15 a.m. Eastern Time:
- + U.S. Treasury and government agency book-entry interest and redemption payments
- + U.S. Treasury and government agency matured coupons and definitive securities received before the maturity date

Post Beginning at 9:15 a.m. Eastern Time:
- − Original issues of Treasury securities[6]

Post at 9:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
- + *FR–ETA Value Fedwire Investments from TIP*

Post at 11:00 a.m. Eastern Time:
- +/− ACH debit transactions
- + EFTPS investments from ACH debit transactions

Post at 11:00 a.m. Eastern Time and Hourly Thereafter:
- +/− Commercial check transactions, including return items
- +/− Check correction amounting to $1 million or more
- + Currency and coin deposits
- + Credit adjustments amounting to $1 million or more

Post at 12:30 p.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:
- + *Dynamic Investment from TIP*

Post by 1:00 p.m. Eastern Time:
- + Same-day Treasury investments

Post at 2:00 p.m. Eastern Time:
- + Processed manual letters of credit[7]

Post at 5:00 p.m. Eastern Time:
- + Treasury checks, postal money orders, and EZ-Clear savings bond redemptions in separately sorted deposits. These items must be presented by 4:00 p.m. eastern time.
- + Local Federal Reserve Bank checks. These items must be presented before 3:00 p.m. eastern time.
- + Processed manual letters of credit
- +/− Same-day ACH transactions. These transactions include ACH return items, check-truncation items, and flexible settlement items.

Post at 6:30 p.m. Eastern Time:[8]

[14] A Retainer institution will collect tax payments using FR–ETA, EFTPS, and/or PATAX, and will accept back in its Main Account, as Treasury investments, only the amount it collected. The Main Account replaces the TT&L account under TIP. An Investor institution will collect tax payments using ETA, EFTPS, and/or PATAX, accept those funds as a Treasury investment, and also accept other Treasury investments to its Main Account up to capacity.

[15] For example, a Retainer or Investor institution with sufficient collateral that sends an FR–ETA tax payment at 11:45 a.m. ET will receive an FR–ETA Value Fedwire Investment at 12:30 p.m. ET.

[16] In the event that Thursday is a holiday, TIP will process Treasury-authorized penalty abatements on the following business day.

[17] The Special Direct Investment Account is define din 31 CFR part 203.

[18] The TIP application receives notice of a merger the day the merger occurs and therefore cannot combine merged accounts after the close of Fedwire prior to the merger day. In addition, the TIP operations staff must determine whether the surviving entity will accept the non-surviving entity's account balance and has the capacity to do so.

[3] The posting changes do not affect the overdraft restrictions and overdraft-measurement provisions for nonbank banks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

[4] The Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[5] Settlement entries from the ''settlement sheet'' service will be posted on the next clock hour approximately one hour after settlement data are received by the Reserve Banks. The settlement sheet service will be discontinued by year-end 2001. Settlement entries from the enhanced settlement service will be posted on a flow basis as they are processed.

[6] Original issues of government agency securities are delivered as book-entry securities transfers and will be posted when the securities are delivered to the purchasing institutions.

[7] Letters-of-credit transactions are drawdowns of government grants.

[8] The Reserve Banks will process and post Treasury-authorized penalty abatements on Thursdays. In the event that Thursday is a holiday,

+ *Penalty Abatements from TIP*

Post After the Close of Fedwire Funds Transfer System:

+/− All other non-Fedwire transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3:00 p.m. eastern time, but before 3:00 p.m. local time; noncash collections; credits for U.S. Treasury and government agency definitive security interest and redemption payments if the coupons or securities are received on or after the maturity date; *Treasury Investment Program Main Account Balance Limit Withdrawals and Collateral Deficiency Withdrawals; Main Account Treasury Withdrawals*;[9] *31 CFR part 202 Deficiency Withdrawals;* subscriptions for SLGS; currency and coin shipments; small-dollar credit adjustments; all debit adjustments; and small-dollar check corrections. Discount-window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

Equals:

Closing balance

* * * * *

2. Footnotes 7 through 29 are renumbered 10 through 32.

I. Federal Reserve Policy

A. Daylight Overdraft Definition

Policy Statement on Payments System Risk

3. The ''Federal Reserve Policy Statement on Payments System Risk,'' (57 FR 47093, October 14, 1992) section I.A., under the heading ''*Modified Procedures for Measuring Daylight Overdrafts*'' is amended, effective *November 2, 2000,* as follows with changes identified by *italics*:

* * * * *

Modified Procedures for Measuring Daylight Overdrafts[3]

Opening Balance (Previous Day's Closing Balance)

Post at 8:30 a.m. Eastern Time:

+/− Government and commercial ACH credit transactions

+ Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH credit transactions

+ Advance-notice Treasury investments

+ Treasury state and local government series (SLGs) interest and redemption payments

+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and EZ-Clear savings bond redemptions in separately sorted deposits

− Penalty Assessments for tax payments from the Treasury Investment Program (TIP)[4]

Post at 8:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:

+ Main Account Administrative Investment from TIP

+ SDI (Special Direct Investment) or Administrative Investment from TIP

+ 31 CFR part 202 Account Deposits from TIP

− *31 CFR part 202 Deficiency Withdrawals from TIP*

− Uninvested PATAX Tax Deposits from TIP

− *Main Account Balance Limit Withdrawals from TIP*

− *Collateral Deficiency Withdrawals from TIP*

Post at 8:30 a.m., 11:30 a.m., and 6:30 p.m. Eastern Time:

− *Main Account Treasury Withdrawals from TIP*[5]

Post Throughout Business Day:

+/− Fedwire funds transfers

+/− Fedwire book-entry securities transfers

+/− Net settlement entries[6]

Post by 9:15 a.m. Eastern Time:

+ U.S. Treasury and government agency book-entry interest and redemption payments

+ U.S. Treasury and government agency matured coupons and definitive securities received before the maturity date

Post Beginning at 9:15 a.m. Eastern Time:

− Original issues of Treasury securities[7]

Post at 9:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:

+ FR–ETA Value Fedwire Investments from TIP

Post at 11 a.m. Eastern Time:

+/− ACH debit transactions

+ EFTPS investments from ACH debit transactions

Post at 11:00 a.m. Eastern Time and Hourly Thereafter:

+/− Commercial check transactions, including return items

+/− Check correction amounting to $1 million or more

+ Currency and coin deposits

+ Credit adjustments amounting to $1 million or more

Post at 12:30 p.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:

+ Dynamic Investment from TIP

Post by 1:00 p.m. Eastern Time:

+ Same-day Treasury investments

Post at 2:00 p.m. Eastern Time:

+ Processed manual letters of credit[8]

Post at 5:00 p.m. Eastern Time:

+ Treasury checks, postal money orders, and EZ-Clear savings bond redemptions in separately sorted deposits. These items must be presented by 4:00 p.m. eastern time.

+ Local Federal Reserve Bank checks. These items must be presented before 3:00 p.m. eastern time.

+ Processed manual letters of credit

+/− Same-day ACH transactions. These transactions include ACH return items, check-truncation items, and flexible settlement items.

Post at 6:30 p.m. Eastern Time:[9]

+ Penalty Abatements from TIP

Post After the Close of Fedwire Funds Transfer System:

+/− All other non-Fedwire transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3:00 p.m. eastern time but before 3:00 p.m. local time; noncash collection; credits for U.S. Treasury and government agency definitive security interest and redemption payments if the coupons or securities are received on or after the maturity date; subscriptions for SLGS; currency and coin shipments; small-dollar credit adjustments; all debit adjustments; and small-dollar check collections. Discount-window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

Equals:

Closing balance

* * * * *

4. Footnotes 7 through 29 are renumbered 10 through 32.

By order of the Board of Governors of the Federal Reserve System, May 18, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–13016 Filed 5–23–00; 8:45 am]

BILLING CODE 6210–01–P

---

the Reserve Banks will process and post Treasury-authorized penalty abatements on the following business day.

[9] On rare occasions, the Treasury may announce withdrawals in advance that are based on depository institutions' closing balances on the withdrawal date. The Federal Reserve will post these withdrawals after the close of Fedwire.

[3] The posting changes do not affect the overdraft restrictions and overdraft-measurement provisions for nonbank banks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

[4] The Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify depository institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[5] On rare occasions, the Treasury may announce withdrawals in advance that are based on depository institutions' closing balances on the withdrawal date. The Federal Reserve will post these withdrawals after the close of Fedwire.

[6] Settlement entries from the ''settlement sheet'' service will be posted on the next clock hour approximately one hour after settlement data are received by the Reserve Banks. The settlement sheet service will be discontinued by year-end 2001. Settlement entries from the enhanced settlement service will be posted on a flow basis as they are processed.

[7] Original issues of government agency securities are delivered as book-entry securities transfers and will be posted when the securities are delivered to the purchasing institutions.

[8] Letters-of-credit transactions are drawdowns of government grants.

[9] The Reserve Banks will process and post Treasury-authorized penalty abatements on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will process and post Treasury-authorized penalty abatements on the following business day.

DEPARTMENT OF THE TREASURY

Fiscal Service

Treasury Tax and Loan Program Enhancements

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This announces new applications to be available in the Treasury Tax and Loan program.

DATES: The new applications are effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist on (202) 874–6705 or walt.henderson@fms.treas.gov; Mary Bailey, Financial Program Specialist, at (202) 874–6749 or mary.bailey@fms.treas.gov; Adam Martin, Financial Program Specialist, at (202) 874–6881 or adam.martin@fms.treas.gov; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or cindy.johnson@fms.treas.gov; or Ellen Neubauer, Senior Attorney, at (202) 874–6680 or ellen.neubauer@fms.treas.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Federal Reserve) are enhancing the Treasury Tax and Loan (TT&L) program by implementing two new applications. The current TT&L program encompasses two separate components—a depositary component through which Treasury collects Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which Treasury invests short-term operating balances not needed for immediate cash outlays. More than 10,500 commercial financial institutions participate in the TT&L depositary component, collecting and/or reporting almost $1.4 trillion in Fiscal Year 1999. Additionally, more than 1,500 of the TT&L depositaries borrow excess short-term Treasury operating funds by participating in the TT&L investment component.

B. Summary of the New TT&L Applications

On July 10, 2000, Treasury and the Federal Reserve will introduce two new TT&L applications—the Treasury Investment Program (TIP) and the Paper Tax System (PATAX)—which will enhance the current TT&L program. The TIP and PATAX systems will benefit financial institutions by providing the following features:

—Flexibility in investment options by offering dynamic investing through the new TIP application. Dynamic investing allows qualified financial institutions to receive excess Treasury funds throughout the day, provided the institution has the capacity to accept the funds.

—Near real time processing throughout the day. Tax payments settled by TIP (paper tax payments and same day Electronic Federal Tax Payment System (EFTPS) payments) are credited to an institution's accounts throughout the day rather than at the end of the day. A more accurate Treasury balance leads to greater investment opportunities for financial institutions. Financial institutions also benefit from near real time account balance information because they can better manage their cash position.

—Electronic delivery of statements and expanded hours for same day electronic tax payments and for processing paper tax payments (5:00 p.m. Eastern Time cut-off).

—Improved collateral monitoring. TIP will receive hourly collateral updates to help prevent deficiencies. These improvements ensure that Treasury's funds are always fully collateralized.

The Federal Reserve conducted training sessions for select financial institutions on the new TT&L applications across the U.S. during February, March, and April of this year.

Additional Information

In response to the implementation of these new applications, the Federal Reserve is publishing a new policy statement in this separate part pertaining to daylight overdrafts. Prior to July 10, 2000, Treasury's Financial Management Service will update the Treasury Financial Manual (TFM) chapters pertaining to TT&L and collateral. TFM chapters are available at www.fms.treas.gov/tfm/index.html.

For more information on the new TT&L applications, please visit www.frbservices.org. Financial institutions may also visit www.fms.treas.gov/regs.html for regulations and guidance pertaining to TT&L, EFTPS, and collateral. Financial institutions with questions on the new TT&L applications should contact the TT&L National Customer Service Area on 1–800–568-7343.

Dated: May 17, 2000.

Bettsy H. Lane,

Assistant Commissioner, Federal Finance, Financial Management Service.

[FR Doc. 00–13015 Filed 5–23–00; 8:45 am]

BILLING CODE 4810–35–P

Reader Aids

Federal Register

Vol. 65, No. 101

Wednesday, May 24, 2000

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

Public Laws Update Service (numbers, dates, etc.) **523–6641**

TTY for the deaf-and-hard-of-hearing **523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@www.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

25233–25434 1
25435–25622 2
25623–25828 3
25829–26116 4
26117–26480 5
26481–26730 8
26731–26940 9
29941–30334 10
30335–30520 11
30521–30828 12
30829–31072 15
31073–31244 16
31245–31426 17
31427–31782 18
31783–32006 19
32007–33246 22
33247–33428 23
33429–33736 24

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7297 25821
7298 25823
7299 25825
7300 25827
7301 26113
7302 26117
7303 26481
7304 30335
7305 30827
7306 30829
7307 31071
7308 31783
7309 32047
7310 33429
7311 33431

Administrative Orders:
Notice of May 18, 2000 32005

Executive Orders:
January 19, 1917 (Revoked by PL07444) 30429
10977 (See EO 13154) 26479
11478 (Amended by EO 13152) 26115
12871 (Amended by EO 13156) 31785
12983 (See EO 13156) 31785
12985 (See EO 13154) 26479
13047 (See Notice of May 18, 2000) 32005
13149 (See Proc. 7308) 31783
13151 25619
13152 26115
13153 26475
13154 26479
13155 30521
13156 31785

5 CFR

351 25623
532 ..... 26119, 26120, 30821
630 26483
1201 25623

7 CFR

2 31245
47 29941
210 ..... 26904, 31371
220 26904
245 31427
272 33433
274 33433
277 33433
301 ..... 26487, 30337, 31245
400 29941
945 25625
959 29942
981 25233
985 ..... 30341, 32007
989 30525
993 29945
1001 32010
1005 32010
1006 32010
1007 32010
1126 32010
1131 32010
1135 32010
1205 25236
1220 30832
1436 30345
1710 31246
1951 31248

Proposed Rules:
319 30365
360 31289
930 32044
958 30920
1220 30922
1240 30924
1710 31289

9 CFR

Proposed Rules:
77 25292
94 31290
590 26148

10 CFR

72 25241
420 25265
810 26278
Ch. XVIII 30833

Proposed Rules:
32 26148
50 ..... 30550, 31837
76 30018
Ch. 1 26772
431 30929

11 CFR

Proposed Rules:
104 ..... 25672, 31787
111 31787

12 CFR

361 31250
563 30527
563c 30527
563g 30527
614 26278
707 32010
716 31722
741 31722
790 25266
900 25267
917 25267
940 25267
1735 26731

Proposed Rules:
35.....31962
207.....31962
226.....33499
346.....31962
533.....31962
611.....26776
900.....25676, 26518
917.....26518
926.....26518
940.....25676
944.....26518
950.....25676, 26518
952.....26518
955.....25676
956.....25676
961.....26518
980.....26518

13 CFR

121.....30836
124.....33249

14 CFR

25.....25435
39 .....25278, 25280, 25281, 25437, 25627, 25829, 25833, 26121, 26122, 26124, 26735, 26738, 30527, 30529, 30532, 30534, 30536, 30538, 30539, 30863, 30865, 30874, 31253, 31255, 31256, 31259, 32011, 32013, 32015,32016, 32018, 32021, 33441, 33444
71 .....25439, 25440, 26126, 26128, 30541, 30876, 30877, 30878, 30879, 32023, 33250, 33614
91.....31214, 31798
95.....26740
97 .....25838, 25842, 31427, 31798
121.....26128

Proposed Rules:
23.....30936
39 .....25694, 25696, 25892, 26149, 26152, 26781, 26783, 30019, 30021, 30023, 30025, 30028, 30031, 30033, 30553, 31109, 31113, 31291, 31837, 31839
71 .....25455, 25456, 25457, 26154, 26155, 26156, 26157, 26158, 26160, 26785, 26786, 26787, 26788, 30036, 30678, 31504, 32046, 32047
121.....33720
135.....33720

15 CFR

902.....31430

Proposed Rules:
301.....30555
922.....31634, 32048

16 CFR

305.....30351
313.....33646

Proposed Rules:
307.....26534
310.....26161

17 CFR

4.....25980
231.....25843
241.....25843
270.....25630
271.....25843

Proposed Rules:
240.....26534

18 CFR

388.....33446

19 CFR

12.....33251
19.....31260
24.....31261
101.....31262
122.....31263
159.....31261
162.....33254
174.....31261

20 CFR

404.....31800

Proposed Rules:
217.....30366
335.....26161
403.....30037

21 CFR

10.....25440
13.....25440
14.....25440
15.....25440
25.....30352
177.....26744
178.....26129, 26746
203.....25639
205.....25639
510.....25641
522.....26747
884.....31454
1301.....30541

Proposed Rules:
2.....26789
16.....26162
25.....30366
900.....26162

22 CFR

Proposed Rules:
706.....30369

23 CFR

450.....31803
668.....25441
771.....31803

24 CFR

84.....30498
583.....30822
905.....25445

Proposed Rules:
2003.....32240
3280.....31778
3282.....31778

25 CFR

Proposed Rules:
38.....26728

26 CFR

1 .....31073, 31078, 31805, 32152
31.....32152
48.....26488

Proposed Rules:
1 .....26542, 31115, 31118, 31841, 31853, 33504

27

275.....31079

Proposed Rules:
9.....31853

29 CFR

4022.....30880
4044.....30880

Proposed Rules:
1910.....33263

30 CFR

250.....25284
917.....29949
948.....26130

31 CFR

210.....33449
560.....25642

Proposed Rules:
10.....30375

32 CFR

Ch. XXIX.....30542
701.....31456
727.....26748
767.....31079

Proposed Rules:
701.....31505

33 CFR

100 .....25446, 25644, 31083, 31086, 33255
110 .....31083, 31086, 31091, 32023, 33255
117 .....25446, 25645, 25646, 29954, 30881, 31478, 33449
155.....31806
165 .....26489, 26750, 29954, 30883, 30884, 31086, 31091, 31479, 31813, 32023, 33255, 33258, 33449, 33450

Proposed Rules:
117.....30043, 30938
165 .....25458, 25980, 30376, 31293
167.....31856
334.....33426

34 CFR

674.....26136

Proposed Rules:
100.....26464
104.....26464
106.....26464
110.....26464
300.....30314

36 CFR

327.....26136

Proposed Rules:
1253.....26542
294.....30276, 30288

37 CFR

1.....33452

Proposed Rules:
201.....25894, 33266
202.....26162

39 CFR

20.....29955
111.....26750, 31815
952.....32026
913.....31265

Proposed Rules:
111 .....26792, 31118, 31506

40 CFR

9.....25982, 26491
22.....30885
52 .....29956, 29959, 30355, 30358, 31093, 31267, 31480, 31482, 31485, 31489, 32028, 32030, 32033, 33259, 33455
60.....32033
62.....25447, 33461
63.....26491
70.....32035
81.....29959
117.....30885
122.....30885
123.....30885
124.....30885
125.....30885
131.....31682
141.....25982
142.....25982
143.....25982
144.....30885
180 .....25647, 25652, 25655, 25660, 25857, 25860, 29963, 30543, 33260, 33469, 33472, 33692, 33703
185.....33692, 33703
186.....33692, 33703
228.....31492
261.....31096, 32214
228.....30545
270.....39885
271 .....26750, 26755, 29973, 29981
300.....30482, 31821
444.....33423
721.....30912

Proposed Rules:
51.....31858, 33268
52 .....26792, 30045, 30387, 31120, 31297, 31507, 32057, 33280
61.....26932
62.....25460, 33504
63.....26544
81.....30045, 31859
141.....25894, 30194
142.....25894, 30194
239.....26544
271.....26802, 30046
300 .....25292, 26803, 30489, 31864, 32058
403.....26550
430.....31120

41 CFR

101–43.....31218
102–36.....31218
Ch. 301.....31824

Proposed Rules:
60–1.....26088
60–2.....26088

42 CFR

414.....25664
447.....33616
457.....33616

Proposed Rules:
9.....25894
405.....31124
412.....26282
413.....26282

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 24, 2000

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; published 5-24-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New Mexico; published 5-24-00

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Malathion, etc.; published 5-24-00

Mancozeb; published 5-24-00

Methyl bromide, etc.; published 5-24-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Computer III further remand proceedings; Bell Operating Co. enhanced services provision; Computer III and Open Network Architecture safeguards, etc.

Clarification; published 5-24-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Eurocopter France; published 4-19-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Horses from contagious equine meritis (CEM)-affected countries—

Spain; Spanish Pure Breed horses; comments due by 6-2-00; published 4-3-00

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Egg products inspection; fee increase; comments due by 6-1-00; published 5-5-00

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Electronic and information technology accessibility standards; comments due by 5-30-00; published 3-31-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic coastal fisheries cooperative management—

Atlantic Coast horseshoe crab; comments due by 6-2-00; published 5-3-00

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 5-31-00; published 5-16-00

Ocean and coastal resource management:

Coastal Zone Management Act Federal consistency regulations; comments due by 5-30-00; published 4-14-00

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:

Twenty-year patent term; patent term adjustment; implementation; comments due by 5-30-00; published 3-31-00

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Competitive negotiated acquisitions; discussion requirements; comments due by 6-2-00; published 4-3-00

Procurement integrity rewrite; comments due by 5-30-00; published 3-29-00

EDUCATION DEPARTMENT

Grants:

Direct grant programs; discretionary grants; application review process; comments due by 6-1-00; published 4-17-00

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Fluorescent lamp ballasts—

Energy conservation standards; comments due by 5-30-00; published 3-15-00

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Oklahoma; comments due by 6-1-00; published 5-2-00

Clean Air Act:

Accidental release prevention requirements; risk management programs; distribution of off-site consequence analysis information; comments due by 5-30-00; published 4-27-00

Hazardous waste:

Project XL program; site-specific projects—

Minnesota; comments due by 5-30-00; published 5-8-00

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Fenthion, etc.; comments due by 5-30-00; published 3-31-00

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 5-31-00; published 5-1-00

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Tennessee and Alabama; comments due by 5-30-00; published 4-19-00

Texas; comments due by 5-30-00; published 4-19-00

Various States; comments due by 5-30-00; published 4-19-00

FEDERAL ELECTION COMMISSION

Reports by political committees:

Election cycle reporting by authorized committees; comments due by 6-2-00; published 5-3-00

FEDERAL HOUSING FINANCE BOARD

Federal home loan bank system:

Acquired member assets, core mission activities, and investments and advances; comments due by 6-2-00; published 5-3-00

FEDERAL TRADE COMMISSION

Telemarketing sales rules; comments due by 5-30-00; published 5-5-00

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Competitive negotiated acquisitions; discussion requirements; comments due by 6-2-00; published 4-3-00

Procurement integrity rewrite; comments due by 5-30-00; published 3-29-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Title I Property Improvement and Manufactured Home Loan Insurance programs and Title I lender/Title II mortgagee approval requirements; comments due by 5-30-00; published 3-30-00

Public and Indian housing:

Public housing agency plans; poverty deconcentration and public housing integration (“One America”); comments due by 6-1-00; published 4-17-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

San Diego ambrosia; comments due by 5-30-00; published 3-30-00

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc.; comments due by 6-2-00; published 4-25-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land

reclamation plan submissions:

Maryland; comments due by 5-30-00; published 4-28-00

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Nationality:

Naturalization grants; revocation; comments due by 5-30-00; published 3-31-00

JUSTICE DEPARTMENT

Clean Air Act:

Accidental release prevention requirements; risk management programs; distribution of off-site consequence analysis information; comments due by 5-30-00; published 4-27-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Competitive negotiated acquisitions; discussion requirements; comments due by 6-2-00; published 4-3-00

Procurement integrity rewrite; comments due by 5-30-00; published 3-29-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

OPSAIL 2000, New York Harbor, NY; safety zones; comments due by 5-31-00; published 5-17-00

Regattas and marine parades:

Eighth Coast Guard District annual marine events; comments due by 5-30-00; published 4-28-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bell; comments due by 5-30-00; published 3-30-00

Bombardier; comments due by 5-30-00; published 4-28-00

Eurocopter France; comments due by 5-30-00; published 3-28-00

General Electric Co.; comments due by 6-2-00; published 4-3-00

McDonnell Douglas; comments due by 6-1-00; published 4-17-00

New Piper Aircraft, Inc.; comments due by 6-2-00; published 3-30-00

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organizations, ports of entry, etc.:

Milwaukee and Racine, WI; ports consolidation; comments due by 5-30-00; published 3-28-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Tax shelter disclosure statements; cross-reference; comments due by 5-31-00; published 3-2-00

Tax-exempt organizations; taxation of income from corporate sponsorship; comments due by 5-30-00; published 3-1-00

Procedure and administration:

Corporate tax shelter registration; cross-reference; comments due by 5-31-00; published 3-2-00

Investors in potentially abusive tax shelters; requirements to maintain list; cross-reference; comments due by 5-31-00; published 3-2-00

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Flight-training programs; information collection; comments due by 6-2-00; published 4-3-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 434/P.L. 106–200

Trade and Development Act of 2000 (May 18, 2000; 114 Stat. 251)

S. 1744/P.L. 106–201

To amend the Endangered Species Act of 1973 to provide that certain species conservation reports shall continue to be required to be submitted. (May 18, 2000; 114 Stat. 307)

S. 2323/P.L. 106–202

Worker Economic Opportunity Act (May 18, 2000; 114 Stat. 308)

Last List May 10, 2000

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to www.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@www.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.